

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

\_\_\_\_\_x

**G.R., as Parent and Natural Guardian  
o/b/o R.R., an Infant,**

**Plaintiff,**

**No. 07 Civ. 4711 (TPG)**

**-against-**

**NEW YORK CITY DEPARTMENT  
OF EDUCATION,**

**Defendant.**

\_\_\_\_\_x

**PLAINTIFF'S EXHIBITS IN SUPPORT OF  
MOTION  
FOR SUMMARY JUDGMENT**

**PARTNERSHIP FOR CHILDREN'S RIGHTS  
WARREN J. SINSHEIMER (WS 9906)  
MICHAEL D. HAMPDEN (MH 2359),  
of Counsel  
Attorneys for Plaintiff  
271 Madison Avenue, 17<sup>th</sup> Floor  
New York, NY 10016  
(212) 683-7999, ext. 222**

**PLAINTIFF'S EXHIBIT LIST****10/4/06 Impartial Hearing Pleadings, Transcript, and Decision**

<b>EXH.</b>	<b>DATE</b>	<b>TITLE OF DOCUMENT</b>	<b>PAGES</b>
A	8/18/06	Parent's Impartial Hearing Request	2
B	10/4/06	Impartial Hearing Transcript	28
C	10/16/06 <sup>1</sup>	Parent's Post Hearing Memorandum of Law	8
D	10/23/06	Impartial Hearing Officer's Findings of Fact and Decision	11

**Documents Admitted Into Evidence at the 10/4/06 Impartial Hearing**

<b>EXH.</b>	<b>DATE</b>	<b>TITLE OF DOCUMENT</b>	<b>PAGES</b>
E	10/7/05	Individualized Education Program	13
F	9/26/02	Educational Evaluation	2
G	9/19/05	Comprehensive Psychoeducational Evaluation	4
H	9/26/06	Enrollment Agreement 2006-2007 for Winston Preparatory School	1
I	8/17/06	Letter from Warren Sinsheimer to Region 2	1
J	4/12/06	U.S. Individual Income Tax Return 2005	5
K	5/05 (last refreshed)	Internet Document from New York City Department of Education Website Regarding Expenditures for P.S. 111 Seton Falls for the 2003-2004 School Year	1

**State Review Office (SRO) Pleadings and Decision**

<b>EXH.</b>	<b>DATE</b>	<b>TITLE OF DOCUMENT</b>	<b>PAGES</b>
L	11/27/06	New York City Department of Education (DOE) Notice with Petition and Verified Petition to SRO (with exhibits)	23
M	12/27/06	Parent's Verified Answer and Cross-Appeal (with exhibit)	16
N	1/12/07	DOE's Verified Answer to Cross Appeal	11
O	2/9/07	SRO Decision	6

**Additional Evidence**  
**12/22/06 Impartial Hearing Record**

<b>EXH.</b>	<b>DATE</b>	<b>TITLE OF DOCUMENT</b>	<b>PAGES</b>
P	10/27/06	Parent's Impartial Hearing Request	2
Q	11/17/06	DOE's Motion to Dismiss	8

<sup>1</sup> The Parent's Post Hearing Memorandum of Law is incorrectly dated September 19, 2006 on page 7 of the document. The fax cover sheet sent with the document to the Impartial Hearing Officer lists the correct date—October 16, 2006.

R	12/4/06	Parent's Answer to Motion to Dismiss	8
S	12/22/06	Impartial Hearing Transcript	8
T	2/15/07	Impartial Hearing Officer's Findings of Fact and Decision	4

**Additional Evidence**  
**Student Evaluations, Reports, and School Records**

<b>EXH.</b>	<b>DATE</b>	<b>TITLE OF DOCUMENT</b>	<b>PAGES</b>
U	3/21/07	DOE Comprehensive Psychological & Educational Evaluation	28
V	Fall 2006	Winston Preparatory School Fall 2006 Report	6
W	Winter 2007	Winston Preparatory School Winter Progress Report 2007	5
X	Spring 2007	Winston Preparatory School Spring Progress Report 2007	5
Y	6/1/07	Winston Preparatory School Letter to Parents and Standardized Testing Score Reports	8
Z	Academic Year 2006–2007	Winston Preparatory School Report Card 2006–2007	1
AA	10/24/07	Letter from Scott Bezylo to Gloria Rodriguez	1
BB	11/28/07	Winston Preparatory School MS 1 Class 2006-2007 Group Profile: Pervasive, Language Based	2

# EXHIBIT A

08-18-'06 11:21 FROM-

1-186 P001

F-997

176x



LEGAL  
SERVICES FOR  
CHILDREN, INC.

106010

VIA FACSIMILE

August 18, 2006

Impartial Hearing Office  
NYC Dept. of Education  
131 Livingston Street  
Brooklyn, New York 11201

Re: Robert Rios  
679 Waring Avenue Apt. 4H  
Bronx, NY 10467

NYC ID# 268-366-903  
Region 2, District 11

IMPARTIAL HEARING OFFICE  
206 AUG 18 PM 3:39

NOTICE OF APPEARANCE AND REQUEST FOR IMPARTIAL HEARING

Ladies and Gentlemen:

Please be advised that Gloria Rodriguez has retained me on behalf of her son, Robert Rios, to represent them at an impartial hearing. Please address all future correspondence to my attention.

Impartial Hearing

*Issue:* The child, Robert Rios, has not been offered a FAPE for the 2006-2007 school year. The DOE's last IEP was issued on October 27, 2005. This IEP was defective in that legally required participants were not present at the CSE conference where the IEP was created. The October 27, 2005 IEP has classified Robert as Speech/Language Impaired. This is a change from his previous classification of Emotionally Disturbed, but there is no record of an evaluation being made as the basis for this change. The most recent IEP also incorrectly lists Robert as being in the fourth grade. Most important, Robert's minimal progress in his special education class demonstrates that his current placement is inappropriate.

Robert has been accepted at Winston Preparatory School, a private, special education school in Manhattan for the 2006-2007 school year. Winston Prep offers a

271 MADISON AVENUE 17TH FLOOR • NEW YORK, NEW YORK 10016  
212.683.7999 • FAX 212.683.5544 • EMAIL lsc@kidslaw.org

AUG-18-2006 12:42

97x

P.01

03-18-'06 11:21 FROM-

T-186 P004 F-331

structured program in a supportive setting that would be appropriate for a student with Robert's disability.

*Relief requested:* An order directing the Department of Education to pay the tuition for Winston Preparatory School for the 2006-2007 school year

Resolution Meeting

As this is a request for private school tuition payment and the Department will not have anyone present at the meeting who can bind the Comptroller of the City of New York who must agree to such payment, the Parent waives the Resolution Meeting and requests an immediate Impartial Hearing within the time limits established by the Regulations. In the event that a Resolution Meeting is required despite the Parent's waiver and failure of the Department to have a person present who can agree to the prepayment of tuition, please contact me.

I can be reached at (212) 683-7999, extension 222 to schedule the hearing.

Yours truly,

Warren Sinsheimer, Esq.

cc: CSE Region 2

# **EXHIBIT B**

DEPARTMENT OF EDUCATION  
Of the  
CITY OF NEW YORK

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>RE DIRECT</u>	<u>RE CROSS</u>	<u>V. D.</u>	<u>J</u>
----------------	---------------	--------------	------------------	-----------------	--------------	----------

In the Matter of:

ROBERT RIOS

Case No.: 106010

-----X

G. Rodriguez	7	16				
B. Sugarman	33	39				
M. Parent	51	52				

E X H I B I T S

District #11

Wednesday  
October 4, 2006

The above-entitled matter came on for hearing  
at 10:00 a.m.

BEFORE: JUDITH T. KRAMER,  
Impartial Hearing Officer

A P P E A R A N C E S:

For the Student:

WARREN J. SINSHERMAN Attorney  
GLORIA RODRIGUEZ, Parent  
BETH SUGARMAN, Director of Operations, Winston Prep.

For the Department of Education:

MARK PARENT, CSE Region 2 Representative

PARENT

DESCRIPTION

I.D. IN EV.

1	IEP dated 10/7/05, 14 pages	6	7
2	Education Evaluation dated 9/26/02, 6 pages	6	7
3	Psycho-educational Evaluation dated 9/19/05, 4 pages.	6	7
4	Enrollment agreement from Winston Preparatory School, 1 page.	6	7
5	Letter to Region 2, withdrawing Robert from Public School System dated August 17, 2006, 1 page.	6	7
6	Federal Tax Return 2005, 1 page.	6	7
7	New York City Department of Education's Expenditures Sheet, P.S. 111 Student Goals, from 2003-2004	7	7

DEPARTMENT OF EDUCATION DESCRIPTION

I.D. IN EV.

Ubiquis/Nation-Wide Reporting & Convention Coverage  
22 Cortlandt Street - Suite 802, New York, NY 10007  
Phone: 212-227-7440 • 800-221-7242 • Fax: 212-227-7524

Ubiquis/Nation-Wide Reporting & Convention Coverage  
22 Cortlandt Street - Suite 802, New York, NY 10007  
Phone: 212-227-7440 • 800-221-7242 • Fax: 212-227-7524



P R O C E E D I N G S

HEARING OFFICER KRAMER: Okay, good morning. My name is Judith Kramer, I've been appointed to preside over this hearing that was filed by the parent, Ms. Gloria Rodriguez Donne (phonetic) on behalf of her child, case number 106010. Today is September 4; I mean, I'm sorry, October 4<sup>th</sup>, 2006. And it is four minutes after 10:00. I have disclosed, or I have been asked the parties, whom I believe I've met before, whether or not they have any objection to me presiding over this hearing. I will disclose to them in case they've forgotten, that I am an attorney, I've practiced in New York State for thirty-five plus years. My husband is currently a teacher at the Board of Education, but I have no interest in the outcome of this case and he does not interfere with any of my decision-making. And also I currently practice law in a small, law firm in Brooklyn as an advocate for children. So, when I'm not doing this. So if no one has any objections? I will preside over this. Okay. Now we're going to go around the room and introduce ourselves and identify ourselves by title or status.

Ubiquis/Nation-Wide Reporting & Convention Coverage  
22 Cortlandt Street - Suite 802, New York, NY 10007  
Phone: 212-227-7440 • 800-221-7242 • Fax: 212-227-7524

MS. GLORIA RODRIGUEZ: My name is Gloria Rodriguez and I'm Robert Rios's mother.  
MR. WARREN SINSHERMER: Warren Sinshermer, Legal Services for Children, representing the child.  
MR. MARK PARENT: Mark Parent, CSE Region 2 Representative.  
HEARING OFFICER KRAMER: Thank you. Before we begin I just want to clarify that the issue before me today is tuition reimbursement for the child who's been placed in a non-approved private school and that there's been a stipulation as to Prong One, (phonetic) under Carter, that; and I suppose that stipulation would read that the Board is conceding that it did not provide a FAPE for the child?  
MR. PARENT: Correct.  
HEARING OFFICER KRAMER: For the 2005-2006 school year.  
MR. PARENT: (Interposing) 06-2007 school year.  
HEARING OFFICER KRAMER: So this current school year. Alright. And so now we're going to listen to evidence with respect to Prongs 2, 3 and financial needs with respect to the Connors (phonetic) requirement. Is that correct? That's

Ubiquis/Nation-Wide Reporting & Convention Coverage  
22 Cortlandt Street - Suite 802, New York, NY 10007  
Phone: 212-227-7440 • 800-221-7242 • Fax: 212-227-7524

1 what we're doing. Okay. We're ready to begin.  
 2 Before we go on the record, however, I just want  
 3 to make sure that we have all the evidentiary  
 4 material that's been offered, so I'm going to put  
 5 that on the record as well. The parents have  
 6 offered eight exhibits and the district has  
 7 stated that it is not planning to offer any  
 8 because all of those exhibits include documents  
 9 that they would have offered themselves. So  
 10 there's no objection to any of these exhibits  
 11 coming in. Is that correct, Mr. Parent?

12 MR. PARENT: Correct. Although I will  
 13 have a comment about the new exhibit that Mr.  
 14 Sinshermer submitted.

15 HEARING OFFICER KRAMER: Would you like  
 16 to tell me what that comment is before I rule on  
 17 it?

18 MR. PARENT: Okay. In terms of a circle  
 19 figure, total student spend—

20 HEARING OFFICER KRAMER: (Interposing)  
 21 Let's not go into the merits of the document.  
 22 Just tell me if you have an objection.

23 MR. PARENT: No, I don't have any  
 24 objection.

25 HEARING OFFICER KRAMER: Okay. You can—  
 Ubiquitous/Nation-Wide Reporting & Convention Coverage  
 22 Cortlandt Street - Suite 802, New York, NY 10007  
 Phone: 212-227-7440 • 800-221-7242 • Fax: 212-227-7524

1 MR. PARENT: (Interposing) Just as long  
 2 as I can comment on it.

3 HEARING OFFICER KRAMER: You'll be able  
 4 to do that later, if it's in evidence. So you  
 5 have no problem putting it into evidence?

6 MR. PARENT: Right.

7 HEARING OFFICER KRAMER: That's going to  
 8 be marked Parent's Exhibit 8. So Parent's  
 9 Exhibit 1 is an IEP dated 10/7/05, which is  
 10 fourteen pages. Parent's Exhibit 2 is an  
 11 Education Evaluation dated 9/26/02, which is six  
 12 pages; Parent's 3 is a Psycho-educational  
 13 Evaluation dated 9/19/05, which is four pages;

14 Parent's Exhibit 4 is an enrollment agreement  
 15 from Winston Preparatory school which is one  
 16 page. Parent's Exhibit 5 is a letter; did I say  
 17 that, did I say Parent's Exhibit 4 was an  
 18 Enrollment Agreement? I did. Parent's Exhibit 5  
 19 is a letter to Region 2, withdrawing Robert from  
 20 Public School System dated August 17, 2006, which  
 21 is one page. Parent's Exhibit 6 is a tax return  
 22 for the year 2005, which is five pages, Federal  
 23 tax return. Parent's Exhibit 7 is, reserves the  
 24 right for the Parent to offer any other document  
 25 not listed above, prepared by the Board of

Ubiquitous/Nation-Wide Reporting & Convention Coverage  
 22 Cortlandt Street - Suite 802, New York, NY 10007  
 Phone: 212-227-7440 • 800-221-7242 • Fax: 212-227-7524

1 Education and so, Parent's Exhibit 7 will now be  
 2 the New York City Department of Education's  
 3 Expenditures sheet from the internet titled P.S.  
 4 111 Student Goals, and it appears to be a chart  
 5 of expenditures per student for; based on data  
 6 from 2003-2004. - - And all of those will be  
 7 received into evidence.

8 (Whereupon Parents Exhibits 1-7 were  
 9 admitted into evidence.)

10 HEARING OFFICER KRAMER: Now we're ready  
 11 to begin. And you have - - we'll begin. Ms.  
 12 Rodriguez, can you raise your right hand, please?  
 13 Do you swear or affirm that the testimony you are  
 14 going to give today is the truth?

15 MS. RODRIGUEZ: Yes, I do.

16 HEARING OFFICER KRAMER: Okay, thank  
 17 you.

18 MR. SINSHERMER: Ms. Rodriguez, I want  
 19 you to tell us a little bit about Robert. He was  
 20 born when?

21 MS. RODRIGUEZ: September 6, 1995.

22 MR. SINSHERMER: And was the birth  
 23 normal?

24 MS. RODRIGUEZ: Yes, it was.

25 MR. SINSHERMER: And did he start to go  
 Ubiquitous/Nation-Wide Reporting & Convention Coverage  
 22 Cortlandt Street - Suite 802, New York, NY 10007  
 Phone: 212-227-7440 • 800-221-7242 • Fax: 212-227-7524

1 to school at some point in time?

2 MS. RODRIGUEZ: Yes, he did.

3 MR. SINSHERMER: Tell me when.

4 MS. RODRIGUEZ: I first, he first  
 5 started Pre-K, P.S. 76, before that I noticed  
 6 that he had delays with his speech and I was  
 7 really looking for help. I took him to Kennedy  
 8 Center (phonetic) for evaluation, which he  
 9 received constantly some kind of help with  
 10 speech. Then after that I took him to Rainbow  
 11 School, when he was ready to go to Pre-K, where  
 12 they did an evaluation and again he received  
 13 services there, speech constantly and he was in a  
 14 specialty class. Then he was ready to go to the  
 15 regular school and Kindergarten at P.S. 76 in the  
 16 Bronx, when he was-

17 MR. SINSHERMER: Was he classified at  
 18 that time?

19 MS. RODRIGUEZ: Yes.

20 MR. SINSHERMER: And what was the  
 21 classification?

22 MS. RODRIGUEZ: Speech.

23 MR. SINSHERMER: Speech and language?

24 MS. RODRIGUEZ: Speech and language.

25 MR. SINSHERMER: Okay. And how did he

Ubiquitous/Nation-Wide Reporting & Convention Coverage  
 22 Cortlandt Street - Suite 802, New York, NY 10007  
 Phone: 212-227-7440 • 800-221-7242 • Fax: 212-227-7524

complaining because the teacher, I don't remember his name right now, but they say, they don't have the space at that school for Robert and then I ask them what else they can do for me to help Robert somehow. And they ask me if I want him to transfer to another school, which I agree, because I know P.S. 96, because my daughter went there. And I like the school and then they transferred him in the middle of second grade to P.S. 96.

MR. SINSHERMER: What happened in the second grade?

MS. RODRIGUEZ: In P.S. 96 he gets some improvement. He was there until fifth grade.

MR. SINSHERMER: Until fifth grade. Why did you decide to look around for another school?

MS. RODRIGUEZ: I was worried about it because I know like what Mr. Velez (phonetic) -

MR. SINSHERMER: Excuse me; who is Mr. Velez?

MS. RODRIGUEZ: He was the teacher for almost three years.

MR. SINSHERMER: And what did he tell you, anything?

MS. RODRIGUEZ: Yes, he told me that Ubiquitous/Nation-Wide Reporting & Convention Coverage  
22 Cortlandt Street - Suite 802, New York, NY 10007  
Phone: 212-227-7440 • 800-221-7242 • Fax: 212-227-7524

do there?

MS. RODRIGUEZ: He didn't do well at all and I went outside school to arrange--

HEARING OFFICER KRAMER: (Interposing)  
I'm sorry to interrupt, but did you say he was there for Pre-K or for Kindergarten?

MS. RODRIGUEZ: In Pre-K he was at Rainbow School - - and then Kindergarten he went to P.S. 76.

HEARING OFFICER KRAMER: Okay. Sorry.

MR. SINSHERMER: How did he do at P.S. 76?

MS. RODRIGUEZ: He didn't do well at all. Like the second grade I noticed a lower delay behind. He doesn't know how to count, he doesn't know the ABC at all and I also, I asked for an evaluation and looked for help outside the school. I took him to Astor Place (phonetic).

MR. SINSHERMER: What place?

MS. RODRIGUEZ: Astor. It's like a center. Astor Center. And I asked the school if there is anything they can do about it because I didn't see no improvement at all, but and I was asking them at least to change the classroom because he wasn't doing well and everybody was

Ubiquitous/Nation-Wide Reporting & Convention Coverage  
22 Cortlandt Street - Suite 802, New York, NY 10007  
Phone: 212-227-7440 • 800-221-7242 • Fax: 212-227-7524

1 there were trying to change Robert and put him in  
 2 general class, for the following year, that was  
 3 sixth grade, because that school only goes to  
 4 fifth grade.

5 MR. SINSHERMER: Why did he say they  
 6 were going to do that?

7 MS. RODRIGUEZ: Because they don't have  
 8 a setting for those kids. Ms.: the guidance  
 9 counselor, Ms. Kennedy (phonetic) also tells me  
 10 the same thing. And that's when they asked me,  
 11 they gave it to all the parents, some papers to  
 12 put their kids in some kind of you know, charter  
 13 school. I don't know - - and then they suggest  
 14 that I should choose Aspire (phonetic) for him.

15 MR. SINSHERMER: Aspire.

16 MS. RODRIGUEZ: Yes.

17 MR. SINSHERMER: Is that a charter  
 18 school?

19 MS. RODRIGUEZ: Yes, P.S. 175.

20 MR. SINSHERMER: And did you get a hold  
 21 of somebody at the Aspire school?

22 MS. RODRIGUEZ: No.

23 MR. SINSHERMER: And did you talk to  
 24 anybody about the Aspire school?

25 MS. RODRIGUEZ: No.

Ubiquis/Nation-Wide Reporting & Convention Coverage  
 22 Cortlandt Street - Suite 802, New York, NY 10007  
 Phone: 212-227-7440 • 800-221-7242 • Fax: 212-227-7524

1 MR. SINSHERMER: That was at a parent  
 2 conference, was it not, in February?

3 MS. RODRIGUEZ: Around February, I don't  
 4 remember. Around February, I think - -

5 MR. SINSHERMER: Now you haven't  
 6 received any placement to the Aspire School, have  
 7 you?

8 MS. RODRIGUEZ: No.

9 MR. SINSHERMER: And you haven't  
 10 received any placement to any school this year,  
 11 have you?

12 MS. RODRIGUEZ: No.

13 MR. SINSHERMER: And have you ever  
 14 failed to go to a meeting when asked to?

15 MS. RODRIGUEZ: Never.

16 MR. SINSHERMER: Have you ever failed in  
 17 any way to cooperate with the CSE, with the  
 18 school authorities?

19 MS. RODRIGUEZ: No.

20 MR. SINSHERMER: Now you started to; you  
 21 testified you were going to look for private  
 22 schools. How did you come to that decision?

23 MS. RODRIGUEZ: Because I know that  
 24 Robert wasn't ready and he's not ready; he's not  
 25 prepared to go on to General Education class in

Ubiquis/Nation-Wide Reporting & Convention Coverage  
 22 Cortlandt Street - Suite 802, New York, NY 10007  
 Phone: 212-227-7440 • 800-221-7242 • Fax: 212-227-7524

1 regular classes on his IEP. And I know as his  
2 mother that Robert wouldn't do well in general  
3 education.

4 MR. SINSHERMER: On the last IEP, for  
5 2004-2005, is it true that he was put in a twelve  
6 to one-to-one class?

7 MS. RODRIGUEZ: Yes.

8 MR. SINSHERMER: And did anybody tell  
9 you that it should be twelve to one instead?

10 MS. RODRIGUEZ: No.

11 MR. SINSHERMER: When you started to  
12 look for schools, where did you go?

13 MS. RODRIGUEZ: I went to the Library; I  
14 went everywhere. I asked people around to - - I  
15 look for them on the Internet and I was just

16 looking on a list for special classes for kids,  
17 everywhere until I found. I found different  
18 schools and one of them was - - was the Churchill  
19 School, the other one was the Gateway School  
20 (phonetic), they were late in the process.

21 MR. SINSHERMER: That's Churchill and  
22 Gateway?

23 MS. RODRIGUEZ: Yes. Then I think I  
24 found Winston and I went to the open house and I  
25 fill out the application that was a process.

Ubiquis/Nation-Wide Reporting & Convention Coverage  
22 Cortlandt Street - Suite 802, New York, NY 10007  
Phone: 212-227-7440 • 800-221-7242 • Fax: 212-227-7524

1 Robert was put on the waiting list and then they  
2 finally call me back he got a space in the  
3 school.

4 MR. SINSHERMER: And he's there now?

5 MS. RODRIGUEZ: He's there now.

6 MR. SINSHERMER: And has he been there  
7 since the beginning of school?

8 MS. RODRIGUEZ: I can't describe how  
9 happy-

10 MR. SINSHERMER: (Interposing) No,  
11 that's not the question. Has he been there since  
12 the beginning of school in September?

13 MS. RODRIGUEZ: Yes.

14 MR. SINSHERMER: Now tell me now he's  
15 doing.

16 MS. RODRIGUEZ: He's doing great. He's  
17 another child. Like before he used to cry every  
18 morning to go to school because it was so much  
19 stress because they don't understand the class.  
20 The classes were hard. Everyone, it's too hard  
21 for me. And how he get up happy, even the other  
22 day he calls me. I was so surprised, he say,  
23 "You are my hero, Mom, because you found me a  
24 school. I'm so happy in school, the teacher, the  
25 classes are easy for me." And when he come home

Ubiquis/Nation-Wide Reporting & Convention Coverage  
22 Cortlandt Street - Suite 802, New York, NY 10007  
Phone: 212-227-7440 • 800-221-7242 • Fax: 212-227-7524

1 now he don't have no problems with homework. He  
 2 do his homework and he kind of knows what he's  
 3 doing. So it's amazing, the change. It's like  
 4 he's another child.

5 MR. SINSHERMER: Tell me, are you  
 6 employed?

7 MS. RODRIGUEZ: Yes.

8 MR. SINSHERMER: Who are you employed  
 9 by?

10 MS. RODRIGUEZ: I work for the Supreme  
 11 Court as a secretary.

12 MR. SINSHERMER: The Supreme Court of  
 13 New York State?

14 MS. RODRIGUEZ: New York State. I work  
 15 under the 69<sup>th</sup> Committee (phonetic). I'm a  
 16 secretary for five years now; four years now.

17 MR. SINSHERMER: So what is your total  
 18 income?

19 MS. RODRIGUEZ: Right now it's \$35,000.

20 MR. SINSHERMER: Is that the total  
 21 income of everybody in your family that lives  
 22 with you?

23 MS. RODRIGUEZ: Yes.

24 MR. SINSHERMER: And how many people do  
 25 live with you?

Ubiquitous/Nation-Wide Reporting & Convention Coverage  
 22 Cortlandt Street - Suite 802, New York, NY 10007  
 Phone: 212-227-7440 • 800-221-7242 • Fax: 212-227-7524

MS. RODRIGUEZ: Right now my daughter's  
 in boarding school, she's away, and my mother  
 used to live with me but she's back to Dominican  
 Republic, so right now it's only Robert and me.

MR. SINSHERMER: Can you afford to up  
 front the tuition at-

MS. RODRIGUEZ: (Interposing) No.

MR. SINSHERMER: Winston? I have no  
 further questions.

MR. PARENT: Yes. Ms. Rodriguez, do you  
 recall last school year, speaking to Mr. Velez,  
 the teacher, about Robert going to 144?

MS. RODRIGUEZ: No.

MR. PARENT: Middle School 144?

MS. RODRIGUEZ: I never heard about the  
 school until like the middle of September, like,  
 they kept calling me, some recorder, that saying  
 that your child has been absent from school.

This is a recorder from the attendance office.

And he's calling; your son has been absent from

school. And I say I didn't know who is calling

me from. And then the next day I call back and I

spoke to a lady and she say, I don't know if it's

this school and she say, "This is P.S. 144." And

I told my son's name and I told her that we

Ubiquitous/Nation-Wide Reporting & Convention Coverage  
 22 Cortlandt Street - Suite 802, New York, NY 10007  
 Phone: 212-227-7440 • 800-221-7242 • Fax: 212-227-7524

17

1 already sent a letter saying that Robert was  
 2 going to go to a private school. And she say,  
 3 "are you sure of that?" Yeah, I spoke to Mr.  
 4 Velez like, in the middle, like at the end of  
 5 September, and - -

6 MR. PARENT: Can we go off the record?  
 7 HEARING OFFICER KRAMER: I'm sorry?  
 8 MR. PARENT: Can we go off the record a  
 9 minute?

10 HEARING OFFICER KRAMER: Why?

11 MR. PARENT: Okay, well, just even  
 12 though I conceded Prong 1, just for the accuracy  
 13 of the factual record, I can rebut the parent's  
 14 comments, the witness, about 144.

15 HEARING OFFICER KRAMER: Please do it  
 16 yourself, you're not a witness. You can ask her  
 17 additional questions - -

18 MR. PARENT: Okay.

19 HEARING OFFICER KRAMER: But you  
 20 stipulated to Prong 1, so I don't know why you  
 21 care.

22 MR. PARENT: Well, just for the accuracy  
 23 of the factual record.

24 HEARING OFFICER KRAMER: Well, we're not  
 25 going to be discussing that, because it's

Ubiquis/Nation-Wide Reporting & Convention Coverage  
 22 Cortlandt Street - Suite 802, New York, NY 10007  
 Phone: 212-227-7440 \* 800-221-7242 \* Fax: 212-227-7524

16

1 irrelevant.

2 MR. PARENT: Okay.

3 HEARING OFFICER KRAMER: It's  
 4 stipulated, it's irrelevant.

5 MR. PARENT: Okay.

6 HEARING OFFICER KRAMER: Or you can  
 7 bring in a witness and not stipulate.

8 MR. PARENT: Okay, no further questions.

9 HEARING OFFICER KRAMER: I have several  
 10 questions. You said that your child did not  
 11 receive a placement for this current year. When  
 12 was his IEP meeting? Did he have an IEP meeting?  
 13 MS. RODRIGUEZ: No. Last year, around  
 14 September.

15 HEARING OFFICER KRAMER: And that's when  
 16 he was de-classified?

17 MS. RODRIGUEZ: No. This and that they  
 18 told me that he was going to go to a Special Ed  
 19 class.

20 HEARING OFFICER KRAMER: In October of  
 21 2005 he was still Special Ed?

22 MS. RODRIGUEZ: Mm-hmm.

23 HEARING OFFICER KRAMER: But you never  
 24 had any, a review for placement for this year?

25 MS. RODRIGUEZ: Mm-hmm.

Ubiquis/Nation-Wide Reporting & Convention Coverage  
 22 Cortlandt Street - Suite 802, New York, NY 10007  
 Phone: 212-227-7440 \* 800-221-7242 \* Fax: 212-227-7524



1 HEARING OFFICER KRAMER: Okay. You said  
2 that he needed a private placement because he  
3 can't do well in a general education class. How  
4 did he come to be considered for a general  
5 education class that was recommended on his IEP?

6 MS. RODRIGUEZ: No. But they; I heard a  
7 comment from several of the school counselors.

8 HEARING OFFICER KRAMER: But no one ever  
9 told you he was going to be placed in a general  
10 education class?

11 MS. RODRIGUEZ: That's what they told me  
12 they was trying to do.

13 HEARING OFFICER KRAMER: But no one ever  
14 told you that he was going to be placed; in other  
15 words you didn't get a placement in a general  
16 education class?

17 MS. RODRIGUEZ: I didn't see anything  
18 from the Board, not from the Department, no  
19 letter telling me where he's going.

20 HEARING OFFICER KRAMER: And you said  
21 that Winston is good for him because it's easy  
22 for him?

23 MS. RODRIGUEZ: I see the difference  
24 now. Like before he was very like frustrated,  
25 like to do his work. And now I see that the

Ubiquitous/Nation-Wide Reporting & Convention Coverage  
22 Cortlandt Street - Suite 802, New York, NY 10007  
Phone: 212-227-7440 • 800-221-7242 • Fax: 212-227-7524

1 difference is like, he's fine. He's like; I say,  
2 "Why you like Winston now, like better than P.S.  
3 96?" And he say, "Because I understand my  
4 teacher much better. And now I understand what  
5 I'm doing. And you know he's simpler. And I  
6 like the teacher of the class, everybody's nice  
7 and kind, you know, to take time to explain to  
8 me."

9 HEARING OFFICER KRAMER: How big is his  
10 class at Winston?

11 MS. RODRIGUEZ: Eight or seven, it's  
12 different. He goes to different, for like math  
13 he goes to one class and so—

14 HEARING OFFICER KRAMER: (Interposing)  
15 What's the largest class he's in?

16 MS. RODRIGUEZ: In Winston? I guess  
17 twelve. I didn't, I'm sorry because I haven't  
18 gone to the; they don't have; the meeting's next  
19 month.

20 HEARING OFFICER KRAMER: Is Winston a  
21 school for Special Education children?

22 MS. RODRIGUEZ: Yes. The whole school—  
23 from sixth grade to high school.

24 HEARING OFFICER KRAMER: And do you know  
25 what sort of disabilities are addressed at

Ubiquitous/Nation-Wide Reporting & Convention Coverage  
22 Cortlandt Street - Suite 802, New York, NY 10007  
Phone: 212-227-7440 • 800-221-7242 • Fax: 212-227-7524

21

1 Winston?

2 MS. RODRIGUEZ: I know they have to deal

3 with kids with learning disabilities and kids

4 with dyslexia.

5 HEARING OFFICER KRAMER: I'm sorry?

6 Dyslexia?

7 MS. RODRIGUEZ: Yes.

8 HEARING OFFICER KRAMER: Then your son

9 has never been diagnosed with dyslexia?

10 MS. RODRIGUEZ: No, I said the school

11 is-

12 HEARING OFFICER KRAMER: (Interposing)

13 Right. This is another question. Your son has

14 never been diagnosed with dyslexia?

15 MS. RODRIGUEZ: No. Learning

16 Disabilities.

17 HEARING OFFICER KRAMER: He's been

18 diagnosed with Learning Disabilities. Okay. Do

19 they provide him with speech and language therapy

20 in Winston?

21 MS. RODRIGUEZ: Yes. That's the first

22 class, focused. The first thing.

23 HEARING OFFICER KRAMER: Have you had

24 any tests so far?

25 MS. RODRIGUEZ: In Winston? No.

Ubiquitous/Nation-Wide Reporting & Convention Coverage  
 22 Cortlandt Street - Suite 802, New York, NY 10007  
 Phone: 212-227-7440 • 800-221-7242 • Fax: 212-227-7524

22

1 HEARING OFFICER KRAMER: Have you spoken

2 to any of his teachers so far?

3 MS. RODRIGUEZ: Yes, they always keep in

4 touch, especially his Focus teacher is the one

5 that like, calls every week to tell how he's

6 doing.

7 HEARING OFFICER KRAMER: Okay. And how

8 many conversations have you had with his teacher?

9 MS. RODRIGUEZ: Two.

10 HEARING OFFICER KRAMER: Just two?

11 MS. RODRIGUEZ: Mm-hmm.

12 HEARING OFFICER KRAMER: Since the

13 beginning of school?

14 MS. RODRIGUEZ: Yes.

15 HEARING OFFICER KRAMER: And what has

16 she said?

17 MS. RODRIGUEZ: That Robert's adjusting

18 to his class and he seems to be very comfortable

19 in the classroom now with most of the other

20 students.

21 HEARING OFFICER KRAMER: Do you know if

22 she ever had any conversations with Mr. Velez?

23 MS. RODRIGUEZ: No, I don't know.

24 HEARING OFFICER KRAMER: Do you know if

25 she ever reviewed his prior achievement levels at

Ubiquitous/Nation-Wide Reporting & Convention Coverage  
 22 Cortlandt Street - Suite 802, New York, NY 10007  
 Phone: 212-227-7440 • 800-221-7242 • Fax: 212-227-7524

1 his public school last year?

2 MS. RODRIGUEZ: I think she does. She  
3 told me that Robert like, he seems a lot more  
4 different than what they say in the IEP.

5 HEARING OFFICER KRAMER: Has she told  
6 you anything about his academic achievement?

7 MS. RODRIGUEZ: No.

8 HEARING OFFICER KRAMER: Did the child  
9 go through a screening process at Winston?

10 MS. RODRIGUEZ: Yes, at first before he  
11 got admitted he have the interview, like one two  
12 hour in the classroom to see how he works.

13 HEARING OFFICER KRAMER: How many hours?

14 MS. RODRIGUEZ: Like, three hours. Like

15 - -

16 HEARING OFFICER KRAMER: So he didn't  
17 start there on the first, right?

18 MS. RODRIGUEZ: He started school on the  
19 first day.

20 HEARING OFFICER KRAMER: When did they  
21 observe him in the classroom, on the first day?

22 MS. RODRIGUEZ: No. Before he come, it  
23 was before he started school. Yeah, but like,  
24 one day that they gotta go to the school, to see  
25 how it works with all the kids. - - I can't

Ubiquis/Nation-Wide Reporting & Convention Coverage  
22 Cortlandt Street - Suite 802, New York, NY 10007  
Phone: 212-227-7440 • 800-221-7242 • Fax: 212-227-7524

1 recall the date. - -

2 HEARING OFFICER KRAMER: So was he with  
3 those kids in the school?

4 MS. RODRIGUEZ: Yeah.

5 HEARING OFFICER KRAMER: So was it  
6 fading in a Summer School curriculum then?

7 MS. RODRIGUEZ: It was like at the end  
8 of the school year. In June, around June.

9 HEARING OFFICER KRAMER: In June. So he  
10 went for an interview in June?

11 MS. RODRIGUEZ: Yes.

12 HEARING OFFICER KRAMER: You said that  
13 your total income was \$35,000; do you own any  
14 properties?

15 MS. RODRIGUEZ: No.

16 HEARING OFFICER KRAMER: Do you own a  
17 car?

18 MS. RODRIGUEZ: No.

19 HEARING OFFICER KRAMER: Do you have a  
20 bank account?

21 MS. RODRIGUEZ: Excuse me?

22 HEARING OFFICER KRAMER: Do you have a  
23 bank account?

24 MS. RODRIGUEZ: Yes, I have checking and  
25 savings.

Ubiquis/Nation-Wide Reporting & Convention Coverage  
22 Cortlandt Street - Suite 802, New York, NY 10007  
Phone: 212-227-7440 • 800-221-7242 • Fax: 212-227-7524

1 HEARING OFFICER KRAMER: And can I ask  
2 you what's in your savings account?

3 MS. RODRIGUEZ: Not much, around, I  
4 don't have that much. I don't know, about \$800.

5 HEARING OFFICER KRAMER: How much is in  
6 your checking account?

7 MS. RODRIGUEZ: Less than \$200.

8 HEARING OFFICER KRAMER: Do you rent  
9 your apartment?

10 MS. RODRIGUEZ: Yes.

11 HEARING OFFICER KRAMER: And what is  
12 your monthly rental?

13 MS. RODRIGUEZ: \$975.

14 HEARING OFFICER KRAMER: Do you have any  
15 other monthly expenses.

16 MS. RODRIGUEZ: Cable, telephone.

17 HEARING OFFICER KRAMER: Cable TV?

18 MS. RODRIGUEZ: TV, yes.

19 HEARING OFFICER KRAMER: So then that's  
20 another \$200 a month, would you say, between  
21 telephone, cable and internet?

22 MS. RODRIGUEZ: Yes.

23 HEARING OFFICER KRAMER: Something like  
24 that. And does Robert receive any kind of  
25 disability money.

Ubiquitous/Nation-Wide Reporting & Convention Coverage  
22 Cortlandt Street - Suite 802, New York, NY 10007  
Phone: 212-227-7440 • 800-221-7242 • Fax: 212-227-7524

1 MS. RODRIGUEZ: Oh yes, I forgot. Yes,  
2 he receives Social Security.

3 HEARING OFFICER KRAMER: And how much is  
4 that?

5 MS. RODRIGUEZ: Like, \$600.

6 HEARING OFFICER KRAMER: A month?

7 MS. RODRIGUEZ: Yes.

8 HEARING OFFICER KRAMER: And what is  
9 that for?

10 MS. RODRIGUEZ: Just for everything in  
11 the house, the how - - the different things I  
12 can't really afford myself.

13 HEARING OFFICER KRAMER: So that's  
14 another \$7,200 a year. Do you get any other  
15 disability checks from anybody else in your  
16 household?

17 MS. RODRIGUEZ: No.

18 HEARING OFFICER KRAMER: Okay. And what  
19 is the tuition at Winston?

20 MR. SINSHERMER: \$38,600 I think. It's  
21 in the--

22 HEARING OFFICER KRAMER: (Interposing)  
23 I know, I'm trying to find that document. I  
24 don't think you gave me that. I think you took  
25 it away when you were going to give me another

Ubiquitous/Nation-Wide Reporting & Convention Coverage  
22 Cortlandt Street - Suite 802, New York, NY 10007  
Phone: 212-227-7440 • 800-221-7242 • Fax: 212-227-7524

1 one.  
 2 MR. SINSHERMER: No the Winston, no.  
 3 HEARING OFFICER KRAMER: Because it was  
 4 an original and we were going to make a copy.  
 5 MR. SINSHERMER: Oh okay.  
 6 HEARING OFFICER KRAMER: I think you  
 7 took it away from me.  
 8 MR. SINSHERMER: I don't have it.  
 9 HEARING OFFICER KRAMER: It doesn't  
 10 matter. You can get it later. I can get it  
 11 later.  
 12 MR. SINSHERMER: Oh, here it is. What  
 13 was, it's \$38,750.  
 14 HEARING OFFICER KRAMER: And does the  
 15 school have any ability to lend you money? Do  
 16 they have a loan program? Did you ask?  
 17 MS. RODRIGUEZ: Yeah, they have a FIP  
 18 (phonetic) program.  
 19 HEARING OFFICER KRAMER: And do you  
 20 qualify for any of them?  
 21 MS. RODRIGUEZ: I haven't tried.  
 22 HEARING OFFICER KRAMER: Haven't tried.  
 23 MS. RODRIGUEZ: I called FIP a few  
 24 times, but I didn't, I can't afford to pay alone.  
 25 HEARING OFFICER KRAMER: No, but I'm

Ubiquis/Nation-Wide Reporting & Convention Coverage  
 22 Cortlandt Street - Suite 802, New York, NY 10007  
 Phone: 212-227-7440 • 800-221-7242 • Fax: 212-227-7524

1 asking you whether or not the school has any  
 2 particular way in which you can borrow money to  
 3 pay for tuition. Several schools have tuition  
 4 loan programs.  
 5 MS. RODRIGUEZ: Yeah, they give me some  
 6 paper, like different kind of programs.  
 7 HEARING OFFICER KRAMER: And you haven't  
 8 looked into them?  
 9 MS. RODRIGUEZ: No.  
 10 HEARING OFFICER KRAMER: Do you know if  
 11 they're low interest rates? Do you know if  
 12 they're interest free? Do you know anything like  
 13 that?  
 14 MS. RODRIGUEZ: No. I was waiting, to  
 15 be honest I was waiting for - -  
 16 HEARING OFFICER KRAMER: What grade is  
 17 Robert in at this point?  
 18 MS. RODRIGUEZ: He's supposed to be in  
 19 sixth grade.  
 20 HEARING OFFICER KRAMER: And is he in  
 21 sixth grade at Winston? Can I see the contract  
 22 with the school please? Has any part of his  
 23 tuition been paid yet?  
 24 MR. SINSHERMER: There is--  
 25 HEARING OFFICER KRAMER: (Interposing)

Ubiquis/Nation-Wide Reporting & Convention Coverage  
 22 Cortlandt Street - Suite 802, New York, NY 10007  
 Phone: 212-227-7440 • 800-221-7242 • Fax: 212-227-7524

1 I'm asking the witness.

2 MR. SINSHERMER: Oh. Okay.

3 MS. RODRIGUEZ: The - - phone call at  
4 the - - phone. And they pay what they call the  
5 bridge loan. It was--

6 HEARING OFFICER KRAMER: What is that  
7 name? Yes or no? Tuition's been paid or not?

8 MS. RODRIGUEZ: Not the whole tuition  
9 was paid.

10 HEARING OFFICER KRAMER: How much?

11 MS. RODRIGUEZ: The first deposit,  
12 \$3,875.

13 HEARING OFFICER KRAMER: And that's  
14 through a bridge loan from where?

15 MS. RODRIGUEZ: The Fairness Fund.

16 HEARING OFFICER KRAMER: The what?

17 MS. RODRIGUEZ: The Fairness Fund.

18 HEARING OFFICER KRAMER: I don't know  
19 what you - -

20 MS. RODRIGUEZ: They then wanted to hold  
21 us back.

22 HEARING OFFICER KRAMER: And what is a  
23 Fairness Fund?

24 MS. RODRIGUEZ: Excuse me?

25 HEARING OFFICER KRAMER: What is the  
Ubiquis/Nation-Wide Reporting & Convention Coverage  
22 Cortlandt Street - Suite 802, New York, NY 10007  
Phone: 212-227-7440 \* 800-221-7242 \* Fax: 212-227-7524

Fairness Fund?

MS. RODRIGUEZ: It's like, can Mr.  
Sinshermer explain? Because I really can't  
explain to you.

HEARING OFFICER KRAMER: You can't  
explain.

MS. RODRIGUEZ: It's like some kind of  
hold so he can hold his spot.

HEARING OFFICER KRAMER: And how did you  
find this Fairness Fund?

MS. RODRIGUEZ: I asked Mr. Sinshermer  
and I hope because I can't be paying out that  
kind of money. I don't want Robert to lose his  
spot.

HEARING OFFICER KRAMER: And what kind  
of interest are you paying on the \$3,875 that  
you've paid?

MS. RODRIGUEZ: No, I--

HEARING OFFICER KRAMER: (Interposing)  
Interest-free?

MS. RODRIGUEZ: - -

HEARING OFFICER KRAMER: Okay. And it  
says here that on October 1<sup>st</sup> she has to pay  
\$17,437.50. If not, well actually on June 1<sup>st</sup>,  
2006, you had to pay \$17,437.50; did you pay that

Ubiquis/Nation-Wide Reporting & Convention Coverage  
22 Cortlandt Street - Suite 802, New York, NY 10007  
Phone: 212-227-7440 \* 800-221-7242 \* Fax: 212-227-7524

31

32

1 money?

2 MS. RODRIGUEZ: No.

3 HEARING OFFICER KRAMER: And they

4 admitted him anyway?

5 MS. RODRIGUEZ: Because like when they;

6 when Robert got approved because he was on

7 waiting list, that date already passed and I

8 spoke to them and they say.

9 HEARING OFFICER KRAMER: What'd they

10 say?

11 HEARING OFFICER KRAMER: I spoke to them

12 and they say like, just don't worry about it.

13 We're going to work with them. We have time.

14 They did like, extension. And I-

15 HEARING OFFICER KRAMER: (Interposing)

16 What about the second payment that was due on

17 October 1<sup>st</sup>?

18 MS. RODRIGUEZ: No. I didn't pay.

19 HEARING OFFICER KRAMER: So they're not

20 going to kick him out if you don't pay on time,

21 right?

22 MS. RODRIGUEZ: - -

23 HEARING OFFICER KRAMER: Okay, I have no

24 further questions.

25 MR. SINSHERMER: I'd like to go back.

Ubiquis/Nation-Wide Reporting & Convention Coverage  
22 Cortlandt Street - Suite 802, New York, NY 10007  
Phone: 212-227-7440 • 800-221-7242 • Fax: 212-227-7524

1 HEARING OFFICER KRAMER: Please do.

2 MR. SINSHERMER: I'd like to talk about

3 the Fairness Fund. Because of the fact that when

4 you apply for Winston Prep, they gave you

5 application for the Fairness Fund?

6 MS. RODRIGUEZ: Yes.

7 MR. SINSHERMER: And did you in fact,

8 fill that application out and send it to the

9 Fairness Fund?

10 MS. RODRIGUEZ: Yes, I did.

11 MR. SINSHERMER: And did the Fairness

12 Fund send you a contract which you signed?

13 MS. RODRIGUEZ: Yes.

14 MR. SINSHERMER: In which you said you

15 did not have to pay any interest?

16 MS. RODRIGUEZ: Yes.

17 MR. SINSHERMER: In which it said you

18 did not have to pay it back in case you lost?

19 MS. RODRIGUEZ: Yes, that's correct.

20 MR. SINSHERMER: And that's enough, I

21 think.

22 HEARING OFFICER KRAMER: Anything else?

23 MR. PARENT: No.

24 HEARING OFFICER KRAMER: Well, it's

25 10:30, so I guess the other witness can stay.

Ubiquis/Nation-Wide Reporting & Convention Coverage  
22 Cortlandt Street - Suite 802, New York, NY 10007  
Phone: 212-227-7440 • 800-221-7242 • Fax: 212-227-7524

33  
1 It's 10:35, actually.

2 MR. SINSHERMER: Okay. May I go off the  
3 record and call?

4 HEARING OFFICER KRAMER: I'll go off the  
5 record for a minute.

6 (OFF THE RECORD)

7 (ON THE RECORD)

8 MR. SINSHERMER: Would you state your  
9 full name and your position at Winston?

10 MS. BETH SUGARMAN: Beth Sugarman,  
11 Director of Operations and Educational Research.

12 MR. SINSHERMER: And tell me what are  
13 your educational qualifications?

14 MS. SUGARMAN: I'm a Speech and Language  
15 Pathologist, a Master's from Teachers College at  
16 Columbia University and I've been employed at  
17 Winston Prep for the last nine years.

18 MR. SINSHERMER: And what does your job  
19 at Winston Prep entail?

20 MS. SUGARMAN: I oversee placement of  
21 children to ensure that they're placed in an  
22 appropriate group based upon a learning profile  
23 as well as testing incoming students and current  
24 students.

25 MR. SINSHERMER: Are you familiar with  
Ubiquis/Nation-Wide Reporting & Convention Coverage  
22 Cortlandt Street - Suite 802, New York, NY 10007  
Phone: 212-227-7440 • 800-221-7242 • Fax: 212-227-7524

34  
1 Robert Rios?

2 MS. SUGARMAN: Yes, I am.

3 MR. SINSHERMER: And tell us, when did  
4 he start at Winston?

5 MS. SUGARMAN: He started this  
6 September, just last month.

7 MR. SINSHERMER: And what is the process  
8 by which he was accepted?

9 MS. SUGARMAN: It was deemed appropriate  
10 that Robert has, is possessed with a non-verbal  
11 learning disorder; has difficulty with  
12 comprehension and vocabulary and we have a group  
13 of students based upon that particular profile,  
14 so we grouped him with those students in order to  
15 teach a more homogenous class.

16 MR. SINSHERMER: And are all of the  
17 classes at Winston homogenous with respect to the  
18 disabilities of the child?

19 MS. SUGARMAN: Yes, they are. Yes, we  
20 group students based upon their learning profile  
21 so that we're teaching to their strengths as well  
22 as to their weaknesses.

23 MR. SINSHERMER: Do you as a matter of -  
24 -, do you know how long Winston has been in  
25 existence?

Ubiquis/Nation-Wide Reporting & Convention Coverage  
22 Cortlandt Street - Suite 802, New York, NY 10007  
Phone: 212-227-7440 • 800-221-7242 • Fax: 212-227-7524



1 MS. SUGARMAN: This is our twenty-sixth  
2 year.

3 MR. SINSHERMER: And tell me what  
4 success do you have with your students that  
5 graduate? What percentage of yours students  
6 graduate?

7 MS. SUGARMAN: 100% of our students  
8 graduate, ninety-eight, ninety-nine percent go on  
9 to college based upon that particular graduating  
10 class. But we're on average about ninety-eight  
11 percent.

12 MR. SINSHERMER: And your school is an  
13 entirely Special Ed school?

14 MS. SUGARMAN: Yes, we are 100% Special  
15 Ed.

16 MR. SINSHERMER: And speaking  
17 specifically about Robert, based on your  
18 knowledge of his record and your interviewing of  
19 him and his performance there in the past six  
20 weeks or five weeks, I don't know how long it's  
21 been; are you convinced that Winston is an  
22 appropriate placement for him?

23 MS. SUGARMAN: Yes, very much so. Very  
24 much so. And actually I met with Robert's  
25 teacher yesterday to kind of update his gains

Ubiquis/Nation-Wide Reporting & Convention Coverage  
22 Cortlandt Street - Suite 802, New York, NY 10007  
Phone: 212-227-7440 • 800-221-7242 • Fax: 212-227-7524

Case 1:07-cv-04711-TPG Document 10-3 Filed 12/10/2007 Page 25 of 80

1 since he's been attending Winston, and Peter Hill  
2 who has him for three periods throughout the day,  
3 mentioned that he is just beginning to come out  
4 of his shell and seems to be comfortable now with  
5 raising his hand and participating in class. He  
6 needs a lot of repetition in order to understand  
7 information. He's still struggling with more  
8 conceptual understanding and critical thinking  
9 analysis. We're working on vocabulary,  
10 comprehension, you know, more abstract reasoning  
11 type of abilities.

12 MR. SINSHERMER: There are no general  
13 education students at Winston?

14 MS. SUGARMAN: No. Every one of the  
15 students is here with a Learning Disability, has  
16 a documented Learning Disability. This is not a  
17 mainstream setting.

18 MR. SINSHERMER: Are there any  
19 opportunities for him to be with his non-disabled  
20 peers?

21 MS. SUGARMAN: Not here at Winston.

22 MR. SINSHERMER: Tell me do you know  
23 what the tuition at Winston is?

24 MS. SUGARMAN: \$38,750.

25 MR. SINSHERMER: And would you tell us a

Ubiquis/Nation-Wide Reporting & Convention Coverage  
22 Cortlandt Street - Suite 802, New York, NY 10007  
Phone: 212-227-7440 • 800-221-7242 • Fax: 212-227-7524

day for forty minutes as part of his curriculum. He's not pulled out of a class for his focus period. Each student receives a forty-minute one-to-one period each and every day. And within this class the instructor, his reading teacher, will target more specifically vocabulary skills, comprehension skills, based upon Robert's particular strengths, weaknesses and scaffolding from what takes place throughout the curriculum to further develop skills and abilities.

MR. SINSHERMER: And what reports have you had from the Focus teacher and the other teachers?

MS. SUGARMAN: Focus teacher said that although very shy at first, Robert didn't really participate, more so not due to his being difficult, due to I think his just being a little shy and uncertain in a new setting, but that he's recently begun to really participate more so in the one-to-one setting and seems to be more comfortable admitting when things are difficult for him. In the classroom the teacher says that he requires a lot of repetition, and information to be presented slowly and broken down for him on a consistent basis. And he's in a class with

Ubiquis/Nation-Wide Reporting & Convention Coverage  
22 Cortlandt Street - Suite 802, New York, NY 10007  
Phone: 212-227-7440 • 800-221-7242 • Fax: 212-227-7524

little bit about the Focus group at Winston?

MS. SUGARMAN: Focus Program at Winston is where each student receives one-to-one remediation and is paired with a specialist based upon their particular learning profile. It is a skill-based program, it's not a tutorial program, so within the one-to one setting every single day, and again, it's part of our curriculum, so Robert is not pulled out of a class--

HEARING OFFICER KRAMER: (Interposing)  
Could you speak a little slower please?

MS. SUGARMAN: Working with a reading specialist to help him--

MR. SINSHERMER: (Interposing) Ms. Sugarman, the Hearing Officer would like you to speak a little slower.

HEARING OFFICER KRAMER: You're speaking much too quickly for me.

MS. SUGARMAN: I'm sorry.

HEARING OFFICER KRAMER: I'm not following what you're saying. I'm sorry.

HEARING OFFICER KRAMER: Okay. He is paired with a learning specialist each and every day. And his particularly focus instructor is a reading specialist and he meets with her every

Ubiquis/Nation-Wide Reporting & Convention Coverage  
22 Cortlandt Street - Suite 802, New York, NY 10007  
Phone: 212-227-7440 • 800-221-7242 • Fax: 212-227-7524

1 twelve students, so he has the opportunity in  
 2 which to you know, really just have information  
 3 broken down at that pace for the class as well.

4 MR. SINSHERMER: He's in a class with  
 5 twelve students, how many teachers?

6 MS. SUGARMAN: One teacher.

7 MR. SINSHERMER: And are your teachers  
 8 there certified Special Ed teachers?

9 MS. SUGARMAN: Yes.

10 MR. SINSHERMER: I have no further  
 11 questions.

12 HEARING OFFICER KRAMER: Mr. Parent?

13 MR. PARENT: Yes, Ms. Sugarman?

14 MS. SUGARMAN: Yes.

15 MR. PARENT: You're not a State Approved  
 16 school, is that correct?

17 MS. SUGARMAN: No, we are not.

18 MR. PARENT: And now you mentioned at  
 19 the beginning of your testimony that Robert is  
 20 grouped according to having a Non-verbal Learning  
 21 -Disorder?

22 MS. SUGARMAN: Well, he presents with,  
 23 his skills are low-functioning, I say non-verbal  
 24 in that he has difficulty with more abstract  
 25 thinking; difficulty with making connections,

Ubiquis/Nation-Wide Reporting & Convention Coverage  
 22 Cortlandt Street - Suite 802, New York, NY 10007  
 Phone: 212-227-7440 • 800-221-7242 • Fax: 212-227-7524

he's a very concrete, very, very concrete  
 learner.

MR. PARENT: Okay. Does your school  
 address language delays?

(BREAK IN AUDIO)

MS. SUGARMAN: Yes. And what we do with  
 our children that have language delays is again,  
 we break the information down into visual  
 presentations as well as auditory presentations.

It's repeated at the onset of every class as far  
 as what did we do yesterday, what did we learn.  
 Again, these students need a tremendous amount of  
 repetition, due to some vocabulary weaknesses, we  
 try to teach them how to use context clues in  
 which to improve their understanding of language.

Robert also has some deficits in his decoding  
 skills which I'm sure are impacting his  
 comprehension as well, as well as his written  
 language. So he's, you know, across the board he  
 has difficulties in reading comp, listening  
 comprehension, mathematical difficulties,  
 certainly with word problems. So we just try to  
 break information down. Really good students  
 understand the visual appreciation for language  
 and to provide them with semantic maps our

Ubiquis/Nation-Wide Reporting & Convention Coverage  
 22 Cortlandt Street - Suite 802, New York, NY 10007  
 Phone: 212-227-7440 • 800-221-7242 • Fax: 212-227-7524

1 outlines or some type of repetition and guidance  
2 with which to help them understand information  
3 more clearly.

4 MR. PARENT: Do you use any particular  
5 sort of reading program in your school?

6 MS. SUGARMAN: Robert's focus teacher  
7 is, as I mentioned, a Reading Specialist, I  
8 believe she has two Masters degrees, in  
9 particular one in Learning Disabilities and one  
10 in Reading Disabilities. And I believe that she  
11 is working upon targeting with Wilson Program as  
12 well as the Preventing Academic Failure Program  
13 and I think she takes pieces from each and  
14 utilizes those with Robert based upon what his  
15 needs are and whatever that particular objective  
16 is at that given time. We kind of mix. We don't  
17 necessarily utilize one particular program.

18 MR. PARENT: Okay. Can you tell me what  
19 Robert's reading level is now in terms of grade  
20 level?

21 MS. SUGARMAN: 3.3, third grade.

22 MR. PARENT: And that's based on what?

23 MS. SUGARMAN: That's on the Woodcock-  
24 Johnson (phonetic).

25 MR. PARENT: Administered when?  
Ubiquis/Nation-Wide Reporting & Convention Coverage  
22 Cortlandt Street - Suite 802, New York, NY 10007  
Phone: 212-227-7440 • 800-221-7242 • Fax: 212-227-7524

MS. SUGARMAN: Based upon our records  
that was 2005, October 2005.

MR. PARENT: Okay, you're referring to  
testing noted on the October '05 IEP?

MS. SUGARMAN: Yes, that's according to  
the information I have before me.

MR. PARENT: So you haven't done any new  
assessment?

MS. SUGARMAN: Not at this time.

MR. PARENT: Okay, no further questions.

HEARING OFFICER KRAMER: Okay, I have a  
couple of questions. You said that you were in  
charge of testing incoming students?

MS. SUGARMAN: I will test some of the  
admission students.

HEARING OFFICER KRAMER: Did you test  
Robert?

MS. SUGARMAN: Did I test Robert? No, I  
did not. The admissions director tested him.

HEARING OFFICER KRAMER: And what did  
they test him about?

MS. SUGARMAN: The Test of Written  
Language, we like to get a writing sample from  
students. We also do the VMI (phonetic) as well  
as parts of the TONY (phonetic), which Robert had

Ubiquis/Nation-Wide Reporting & Convention Coverage  
22 Cortlandt Street - Suite 802, New York, NY 10007  
Phone: 212-227-7440 • 800-221-7242 • Fax: 212-227-7524

1 some difficulties with. We'll also not  
 2 necessarily in Robert's case, but because he did  
 3 come in with your recent testing, but based upon  
 4 student's information that they have and how  
 5 updated or current it is, we'll sometimes give  
 6 pieces of SELF (phonetic).

7 HEARING OFFICER KRAMER: And the purpose  
 8 of the tests are?

9 MS. SUGARMAN: To determine again, to  
 10 kind of confirm that your findings or whatever  
 11 the testing is that the students presents with,  
 12 are commensurate with what our findings are. You  
 13 know, we try to get as much information as we can  
 14 about a student, just to confirm what testing is  
 15 presented with what we find here. Because as you  
 16 know, it's one thing to read information on paper  
 17 and it's another to sit across from a student and  
 18 test them in person. To see how they test, not  
 19 necessarily what the results are, but to see how  
 20 they test. And so Robert was, it was somewhat  
 21 laborious for him.

22 HEARING OFFICER KRAMER: Were your  
 23 findings different from the findings that were  
 24 presented to you?

25 MS. SUGARMAN: No, they were actually  
 Ubiquitous/Nation-Wide Reporting & Convention Coverage  
 22 Cortlandt Street - Suite 802, New York, NY 10007  
 Phone: 212-227-7440 • 800-221-7242 • Fax: 212-227-7524

1 commensurate. He scored at the second grade  
 2 level for the word attack; third grade level for  
 3 letter word attack on the Woodcock-Johnson and  
 4 the Woodcock-Johnson from October was third grade  
 5 level as well.

6 HEARING OFFICER KRAMER: Did you ever  
 7 personally observe the child in the classroom at  
 8 Winston?

9 MS. SUGARMAN: I observed him in his  
 10 Focus session.

11 HEARING OFFICER KRAMER: How many times?  
 12 MS. SUGARMAN: Once.

13 HEARING OFFICER KRAMER: When?

14 MS. SUGARMAN: This week.

15 HEARING OFFICER KRAMER: Are all of his  
 16 classes twelve?

17 MS. SUGARMAN: Yes. Excluding his math  
 18 class and if you'll just give me a moment I can  
 19 tell you; but it would be somewhere between ten  
 20 and twelve in his math class as well. If you'd  
 21 like me to look that up, I can.

22 HEARING OFFICER KRAMER: We like  
 23 accuracy, but it's about ten?

24 MS. SUGARMAN: Yes, ten to twelve.

25 HEARING OFFICER KRAMER: With respect to  
 Ubiquitous/Nation-Wide Reporting & Convention Coverage  
 22 Cortlandt Street - Suite 802, New York, NY 10007  
 Phone: 212-227-7440 • 800-221-7242 • Fax: 212-227-7524

1 your tuition, what is the arrangement with regard  
2 to tuition; do you have any loan programs for  
3 students?

4 MS. SUGARMAN: We have a payment  
5 program. We have a Smart Payment Program. And  
6 that's dependent upon the family as they wish to,  
7 how they utilize that. I don't have that  
8 information before me.

9 HEARING OFFICER KRAMER: Do you have any  
10 loan programs?

11 MS. SUGARMAN: No, we do not.

12 HEARING OFFICER KRAMER: But Robert  
13 hasn't paid any portion of his tuition, has he?

14 MS. SUGARMAN: I'm sorry?

15 HEARING OFFICER KRAMER: Robert hasn't  
16 paid the tuition that was due?

17 MS. SUGARMAN: I would have to check  
18 with the bookkeeper, I don't have; I'm not privy  
19 to that information. I can get that for you, but  
20 I don't have that before me.

21 HEARING OFFICER KRAMER: So you don't  
22 know what will happen to him if he doesn't have  
23 an immediate payment? That's not your purview?

24 MS. SUGARMAN: No, it's not.

25 HEARING OFFICER KRAMER: Okay.

Ubiquis/Nation-Wide Reporting & Convention Coverage  
22 Cortlandt Street - Suite 802, New York, NY 10007  
Phone: 212-227-7440 • 800-221-7242 • Fax: 212-227-7524

MS. SUGARMAN: That's between the  
bookkeeping department and the headmaster.

HEARING OFFICER KRAMER: I don't have  
any further questions.

MR. PARENT: Let me just, I have follow  
up.

HEARING OFFICER KRAMER: Just a moment,  
do you have anything else? Okay. We have a  
couple of more questions.

MR. PARENT: Yes.

MS. SUGARMAN: Okay.

MR. PARENT: I apologize if you've  
already answered this question. But just to  
clarify, do you have a speech and language  
therapist on staff?

MS. SUGARMAN: We have about a dozen  
speech and language therapists.

MR. PARENT: Okay. No further  
questions.

MR. SINSHERMER: Thank you very much,  
Beth.

HEARING OFFICER KRAMER: Hold on.

MR. SINSHERMER: I'm sorry.

HEARING OFFICER KRAMER: I have one, a  
follow up to that question, which is, how often

Ubiquis/Nation-Wide Reporting & Convention Coverage  
22 Cortlandt Street - Suite 802, New York, NY 10007  
Phone: 212-227-7440 • 800-221-7242 • Fax: 212-227-7524

1 does Robert receive speech and language therapy

2 at Winston?

3 MS. SUGARMAN: He currently is with a  
4 reading specialist to help develop his  
5 comprehension and decoding abilities.

6 HEARING OFFICER KRAMER: That wasn't my  
7 question.

8 MS. SUGARMAN: I'm sorry.

9 HEARING OFFICER KRAMER: My question was  
10 how often does he see a speech and language  
11 therapist?

12 MS. SUGARMAN: He does not see one.

13 HEARING OFFICER KRAMER: Thank you.

14 MR. PARENT: I would like to follow up  
15 on yours?

16 HEARING OFFICER KRAMER: Alright, go  
17 ahead.

18 MR. PARENT: Why not?

19 MS. SUGARMAN: Well I was trying to  
20 answer before that he's with a reading specialist  
21 because of his decoding and comprehension  
22 difficulties.

23 (END TAPE 080\_335-A)

24 (START TAPE 080\_335-B)

25 HEARING OFFICER KRAMER: We're back on  
Ubiquis/Nation-Wide Reporting & Convention Coverage  
22 Cortlandt Street - Suite 802, New York, NY 10007  
Phone: 212-227-7440 • 800-221-7242 • Fax: 212-227-7524

1 the record.

2 MR. PARENT: Ms. Sugarman are you aware  
3 that his last IEP, the October of '05 IEP had  
4 speech and language as a related service?

5 MS. SUGARMAN: I don't have that in  
6 front of me. I am not aware of that.

7 MR. PARENT: Okay, but is it mutually  
8 exclusive for Robert to receive instruction from  
9 a Reading Specialist and also receive speech and  
10 language therapy?

11 MS. SUGARMAN: Well he is mandated to  
12 receive speech and language therapy, but it's my  
13 understanding; I may be incorrect, but being that  
14 we are not a State Approved school, that we don't  
15 necessarily have to provide that service here.  
16 And that can be received through an independent  
17 provider.

18 MR. PARENT: Are you saying your  
19 providers are full or would not be able to pick  
20 up Robert?

21 MS. SUGARMAN: I'm not saying that, I'm  
22 saying that based upon our findings of his needs  
23 as a student, that he was paired with a reading  
24 specialist because that's what our understanding  
25 of what his needs were, and that's why he was

Ubiquis/Nation-Wide Reporting & Convention Coverage  
22 Cortlandt Street - Suite 802, New York, NY 10007  
Phone: 212-227-7440 • 800-221-7242 • Fax: 212-227-7524

1 paired with a reading person.

2 MR. PARENT: Okay, thank you. No  
3 further questions.

4 MR. SINSHERMER: I have one.

5 HEARING OFFICER KRAMER: Go ahead.

6 MR. SINSHERMER: Were you aware that  
7 speech and language was provided on the last IEP?

8 MS. SUGARMAN: Not before, I was not  
9 aware of that.

10 MR. SINSHERMER: And were you, and there  
11 is no IEP for this year, is that correct? You  
12 don't have one, do you?

13 MS. SUGARMAN: No, we do not.

14 MR. SINSHERMER: Thank you.

15 HEARING OFFICER KRAMER: I have another  
16 question. Did you ever meet with the parent?

17 MS. SUGARMAN: I have not, personally,  
18 no. The admissions director has.

19 HEARING OFFICER KRAMER: Alright, thank  
20 you.

21 MR. SINSHERMER: Thank you very much,  
22 Ms. Sugarman.

23 MS. SUGARMAN: Okay, thank you.

24 HEARING OFFICER KRAMER: Okay, anything  
25 else from anybody?

Ubiqui/Nation-Wide Reporting & Convention Coverage  
22 Cortlandt Street - Suite 802, New York, NY 10007  
Phone 212-227-7440 • 800-221-7242 • Fax: 212-227-7524

1 MR. PARENT: I would like to comment on  
2 the Exhibit regarding expenditures?

3 HEARING OFFICER KRAMER: Well it's not  
4 going to be evidence unless you want to be sworn  
5 in as a witness.

6 MR. PARENT: I'll swear.

7 HEARING OFFICER KRAMER: You want to be  
8 a witness?

9 MR. PARENT: Yes.

10 HEARING OFFICER KRAMER: And who's going  
11 to ask you questions?

12 MR. PARENT: I will.

13 MR. SINSHERMER: I'll ask them,  
14 backwards.

15 HEARING OFFICER KRAMER: Do you want to  
16 be sworn in?

17 MR. PARENT: Sure.

18 HEARING OFFICER KRAMER: Okay, and raise  
19 your right hand. Do you swear or affirm that the  
20 testimony you'll be giving today is true?

21 MR. PARENT: Yes.

22 HEARING OFFICER KRAMER: Okay.

23 MR. PARENT: Okay.

24 HEARING OFFICER KRAMER: And it what  
25 capacity are you testifying?

Ubiqui/Nation-Wide Reporting & Convention Coverage  
22 Cortlandt Street - Suite 802, New York, NY 10007  
Phone: 212-227-7440 • 800-221-7242 • Fax: 212-227-7524



51

1 MR. PARENT: In terms of my own personal  
2 knowledge as an employee of the Department of  
3 Education who has dealt with Impartial Hearing  
4 Cases and cost issues.

5 HEARING OFFICER KRAMER: Okay.

6 MR. PARENT: Okay, I would just like to  
7 comment on the Exhibit submitted by Mr.

8 Sinshermer regarding total per student spending  
9 per Special Ed students for the '03-'04 school  
10 year of \$34,816. I would just like to note that  
11 in my own investigation of the breakdown of  
12 spending, this figure represents monies that  
13 includes things like transportation and other  
14 costs, that it as a comparison to straight  
15 tuition it's kind of an apples and oranges  
16 comparison. The \$34,816 includes what might be  
17 considered tuition, but all other costs as well,  
18 lumped together.

19 HEARING OFFICER KRAMER: In addition to  
20 transportation costs, what else is it?

21 MR. PARENT: Well from what I recall  
22 they talk about custodial services, lunch, food  
23 services, there's a whole list of different  
24 things that they add up in terms of this figure.

25 MR. SINSHERMER: May I?

Ubiquis/Nation-Wide Reporting & Convention Coverage  
22 Cortlandt Street - Suite 802, New York, NY 10007  
Phone: 212-227-7440 • 800-221-7242 • Fax: 212-227-7524

52

HEARING OFFICER KRAMER: Sure.

MR. SINSHERMER: Do you believe that  
Winston serves lunch? That's part of their  
tuition?

MR. PARENT: I don't know how they break  
that down.

HEARING OFFICER KRAMER: He can't know  
that.

MR. SINSHERMER: Well, do you think they  
have lunch service there, custodial service?

MR. PARENT: I don't know.

MR. SINSHERMER: And what year was that  
for, that \$34,000?

MR. PARENT: '03-'04.

MR. SINSHERMER: Thank you very much.

MR. PARENT: Nothing else.

MR. SINSHERMER: Well I'd like to make a  
little closing statement.

HEARING OFFICER KRAMER: Sure, you  
certainly can.

MR. SINSHERMER: I think the behavior of  
the Department of Education wit respect to this  
child is absolutely unbelievable. Here's a  
child, they changed his classification from  
Emotional Disturbance to Speech and Language

Ubiquis/Nation-Wide Reporting & Convention Coverage  
22 Cortlandt Street - Suite 802, New York, NY 10007  
Phone: 212-227-7440 • 800-221-7242 • Fax: 212-227-7524

1 without an evaluation.

2 HEARING OFFICER KRAMER: Can you, I'm  
3 just going to interrupt. I'd like you to really  
4 stick to what's in the records.

5 MR. SINSHERMER: Okay.

6 HEARING OFFICER KRAMER: That  
7 information, because I never heard any of that.  
8 So it's not evidence. If you want to make a  
9 closing it has to be based on the evidence that  
10 I've heard.

11 MR. SINSHERMER: Yeah, well I think the  
12 evidence, the evidence is quite clear. The  
13 region has conceded Prong 1, Prong 2 I think has  
14 been amply demonstrated by testimony both of the  
15 parent and of the school. I would like to point  
16 out a couple of things. I had a recent case  
17 where the question of the least restrictive  
18 environment has been raised. Even though it  
19 wasn't raised in this case, I would like very  
20 much to point the Hearing Officer's Direction to  
21 a case called Giarabelle (phonetic) against  
22 Arlington Central School District, 1418-Fed Sub  
23 2, 2<sup>nd</sup>, 559.

24 HEARING OFFICER KRAMER: End Sub 2<sup>nd</sup>?

25 MR. SINSHERMER: Yes.

Ubiquitous/Nation-Wide Reporting & Convention Coverage  
22 Cortlandt Street - Suite 802, New York, NY 10007  
Phone: 212-227-7440 • 800-221-7242 • Fax: 212-227-7524

HEARING OFFICER KRAMER: 59?

MR. SINSHERMER: 559. In which the  
court in the southern district held while an IEP  
devised by a school district must provide the  
student with an education in the least  
restrictive environment, as parent's inability to  
place his child in the least restrictive  
environment does not bar parental reimbursement.  
And that cites a second circuit case which is, I  
haven't got the citation, it does cite the second  
circuit case. And I think that we've shown that  
this is an appropriate placement. The child is  
doing well. The child never did well in the  
Public School System. The kid is in sixth grade,  
reading at a third grade level. They've had him  
for long enough and I think that it's time that  
the parent had the opportunity to see this child  
progress. That's it.

HEARING OFFICER KRAMER: Mr. Parent?

MR. PARENT: Yeah, so I would like to  
raise in my own closing the LRE issue and to  
oppose Winston on Prong 2; in addition to the  
failure to provide speech and language therapy in  
school at Winston Prep. So therefore the  
Department opposes Winston Prep on Prong 2.

Ubiquitous/Nation-Wide Reporting & Convention Coverage  
22 Cortlandt Street - Suite 802, New York, NY 10007  
Phone: 212-227-7440 • 800-221-7242 • Fax: 212-227-7524

55

1 That's all.

2 HEARING OFFICER KRAMER: Okay.

3 MR. PARENT: Yes.

4 MR. SINSHERMER: I can e-mail you.

5 HEARING OFFICER KRAMER:

6 jtkramer@aol.com. I'll read anything you send

7 me; anything that will help.

8 MR. SINSHERMER: Okay. I'll even send

9 you a copy.

10 (Whereupon, at 11:11 a.m. the proceeding

11 was adjourned.)

56

C E R T I F I C A T I O N

I, Erika Swyler, do hereby certify that I typed the transcript in the Matter of Robert Rios taken on October 4, 2006, by Nelson A. Bello at the offices of the Department of Education, and that to the best of my ability, this is an accurate transcription of what was recorded at that time and place.

Erika Swyler

ERIKA SWYLER, Transcriber

Ubiquis/Nation-Wide Reporting & Convention Coverage  
22 Cortlandt Street - Suite 802, New York, NY 10007  
Phone: 212-227-7440 • 800-221-7242 • Fax: 212-227-7524

Ubiquis/Nation-Wide Reporting & Convention Coverage  
22 Cortlandt Street - Suite 802, New York, NY 10007  
Phone: 212-227-7440 • 800-221-7242 • Fax: 212-227-7524

# EXHIBIT C



## LEGAL SERVICES FOR CHILDREN, INC.

271 MADISON AVENUE • 17<sup>TH</sup> FLOOR • NEW YORK, NY 10016

TELEPHONE: (212) 683-7999 • FAX: (212) 683-5544

### FAX COVER SHEET

TO: Judith T. Kramer

FAX: 718522-7376

FROM: Warren J. Sinsheimer

212-683-7999 x 222

DATE: October 16, 2006

PAGES: 8 (Including cover)

RE: Robert Rios IH Casae#106010

Enclosed please find a copy of a Post Hearing Memorandum of Law in the above entitled matter.

  
Warren J. Sinsheimer

cc: Mark Parent Region 2

**CONFIDENTIALITY NOTE:** This facsimile is intended only for the person or entity to which it is addressed and may contain information that is privileged, confidential or otherwise protected from disclosure. Dissemination, distribution, or copying this facsimile or the information herein by anyone other than the intended recipient is prohibited. If you have received this facsimile in error, please notify us immediately by telephone.

THE NEW YORK CITY DEPARTMENT OF EDUCATION  
-----X  
IN THE MATTER OF

Gloria Rodriguez, on behalf of her son Robert Rios,

**POST HEARING  
MEMORANDUM  
OF LAW**

- against -

Impartial Hearing  
Case No. 106010

New York City Department of Education,

IHO Judith T. Kramer

-----X  
**INTRODUCTION**

Legal Services for Children, Inc. submits this Memorandum on behalf of Gloria Rodriguez, the mother of Robert Rios, and in support of her request that the Department of Education (DOE) be ordered to prepay the tuition of Robert Rios at the Winston Preparatory School for the 2006–2007 school year.

**FACTS**

Robert was born on September 6, 1995. (R at 7) He was classified Speech and Language before he started kindergarten in the New York City Public Schools. (R at 8). The DOE failed to offer him a FAPE for the 2006-07 school year. (R at 4, 12). Robert’s mother applied to Winston Preparatory School for the 2006-07 school year, and, Robert was accepted after having been on the waiting list. (R at 13, 14). The parent sustained her burden of proof with respect to “prong two” through the testimony of Ms. Beth Sugarman. Ms. Sugarman is Director of Operations and Educational Research at the Winston Preparatory School. (R at 33). Ms. Sugarman testified that Winston was an appropriate placement for Robert (R at 37). The DOE offered no evidence that Winston Preparatory School was not an appropriate placement for Robert.

Robert's mother testified that she never failed to cooperate with the CSE or the school authorities (R at 12) and that she never failed to go to a meeting when asked.. (R at 12).

### LEGAL STANDARDS

The Individuals with Disabilities Education Act (IDEA), recently reenacted as the Individuals with Disabilities Education Improvement Act of 2004, is designed to ensure that all children with disabilities are provided with a free appropriate public education (FAPE). See 20 U.S.C.A. § 1400(D)(1)(A) (Supp. 2005); Schaffer v. Weast, 126 S. Ct. 528, 531 (2005); Mackey ex rel. Thomas M. v. Bd. of Educ., 386 F.3d 158, 159–60 (2d Cir. 2004). In order to satisfy the requirements of the IDEA, a school district must provide each disabled child with “special education and related services,” 20 U.S.C.A. § 1401(9) (Supp. 2005), that are “reasonably calculated to enable the child to receive educational benefits,” Bd. of Educ. v. Rowley, 458 U.S. 176, 207 (1982).

Under the standard set forth by the United States Supreme Court in School Committee of Burlington v. Department of Education, 471 U.S. 359 (1985), a board of education may be required to pay for educational services obtained by a parent for his or her child if: (1) the services offered by the board were inadequate or inappropriate; (2) the services obtained by the parent were appropriate; and (3) equitable considerations support the parent's claim. Id. at 370, 374. When the three Burlington prongs are satisfied, parents who have unilaterally placed their child in a private school may obtain reimbursement for the cost of the private school tuition. See Florence County Sch. Dist. Four v. Carter, 510 U.S. 7, 12 (1993); Burlington, 471 U.S. at 369. The fact that a parent has chosen an educational program not approved by the state, rather than one known to be state-approved, is not itself a bar to reimbursement. Carter, 510 U.S. at 14. The private school need not employ certified special education teachers and need not prepare its

own Individualized Education Program (IEP) for the student. Application of a Child with a Disability, Appeal No. 03-066.

The facts of this case satisfy all three Burlington prongs, entitling Ms. Rodriguez to payment for the cost of her son's attendance at the Winston Preparatory School for the 2006–2007 school year.

### ARGUMENT

#### **I. THE NEW YORK CITY DEPARTMENT OF EDUCATION (DOE) FAILED TO PROVIDE ROBERT WITH A FAPE.**

In order to provide a student with a FAPE, a board of education must: (1) comply with the procedural requirements set forth in the IDEA; and (2) develop an IEP that is reasonably calculated to enable the student to receive educational benefits. See Rowley, 458 U.S. at 206–07. The facts of Robert's case satisfy the first Burlington prong because the DOE admitted that it did not provide a FAPE. (R at 4) .

#### **II. THE WINSTON PREPARATORY SCHOOL IS AN APPROPRIATE PLACEMENT FOR ROBERT**

In order to obtain tuition reimbursement under Burlington, parents must demonstrate the appropriateness of the private school in which they have placed their child. An appropriate school is one that provides services “proper under the Act,” Carter, 510 U.S. at 15; Burlington, 471 U.S. at 370, i.e. one that offers an educational program that meets the child's special education needs, Application of a Child with a Disability, Appeal No. 05-039; Application of a Child with a Disability, Appeal No. 01-010. In assessing whether a parent has satisfied the second Burlington prong, it must be borne in mind that “[t]he test for a parental placement is that it is appropriate, not that it is perfect.” Application of a Child with a Disability, Appeal No. 05-075 (citing Warren G. v. Cumberland County Sch. Dist., 190 F.3d 80, 84 (3d Cir. 1999)).



Petitioner met her burden of demonstrating the appropriateness of Robert's placement at the Winston Preparatory School and thus satisfied the second Burlington prong.

The record contains categorical and uncontorverted testimony that Winston Preparatory School is an appropriate placement for Robert. (R at 35).

Robert's placement at the Winston Preparatory School is consistent with the LRE requirement. While this requirement bears on the appropriateness of parents' unilateral placement of their child in a private school, "parents seeking an alternative placement may not be subject to the same mainstreaming requirements as a school board." M.S. ex rel. S.S. v. Bd. of Educ., 231 F.3d 96, 105 (2d Cir. 2000). In addition, "[a]n appropriate private placement is not disqualified because it is a more restrictive environment than that of the public placement." Warren G., 190 F.3d at 84; see also Rose v. Chester County Intermediate Unit, 1996 WL 238699, at \*9 (E.D. Pa. 1996) (concluding that LRE requirement "does not make sense in the context of parental placement" because "the problem that Congress sought to eliminate . . . [with that requirement was] public schools' exclusion of disabled children").

Under the case law, no the parent does not have the burden of establishing that placement she has found for her child is the least restrictive environment. The LRE requirement must be "balanced against the requirement that each student with a disability receive an appropriate education," Application of a Child with a Disability, Appeal No. 03-066 (citing Briggs v. Bd. of Educ., 882 F.2d 688, 692 (2d Cir. 1989)); Application of the Bd. of Educ. of the Guilderland Cent. Sch. Dist., Appeal No. 01-059 (citing Briggs), and the DOE has not provided Robert *any* valid educational placement for the 2006–2007 school year. The United States Court of Appeals for the Second Circuit recently decided: "...parents are not barred from reimbursement where a private school they chose does not meet the IDEA definition of a Free

Appropriate Public Education.” Anthony G v. Board of Education of Hyde Park, Central School District; Docket No. 04-4981-cv. The court further stated that “An appropriate private placement need not meet state education requirements...In addition, parents ‘may not be subject to the same mainstreaming requirements as a school board’” Id at 10, 11

The United States District Court for the Southern District of New York recently ruled: “... while an IEP devised by a school district must provide the student with an education in the least restrictive environment, a parent’s inability to place his child in the least restrictive environment does not bar parental reimbursement.” Gagliardo v. Arlington Central School District 418 F. Supp 2d 559 (citing M.S. 231 F3d at 105).

The Impartial Hearing Officer suggested that because Robert has been at Winston for such a short time, it may be difficult to establish that Winston was an appropriate placement for him. The question of whether an IEP is valid is a *prospective* analysis rather than a *retrospective* one has been decided in the First, Third and Ninth Circuits see: Roland M. v. Concord School Comm., 910 F2d 983, 992 (1<sup>st</sup> Cir. 1990); Carlisle Area Sch. v. Scott P., 63 F.3d 520, 530; and Adams v. Oregon, 195 F.3d 1141, 1149 (9<sup>th</sup> Cir. 1999). Each of these circuits held that “the inquiry into whether an IEP is valid is necessarily a *prospective* analysis, and that consideration of proof of whether an IEP meaningfully contributed to the child’s education is not altogether proper”. D.F. and D.F. v. Ramapo Central School District 430 F. 3d. 595. (2<sup>nd</sup> Cir 1995).

Clearly, the question of the measurement of the appropriateness of a private school placement is analogous. The placement looks *prospectively*. Is the placement one which will give the child an appropriate education? That is question which is to be asked. In this case the answer is “yes”.

A further reason to look forward to ascertain the appropriateness of the placement for Robert is the financial situation on the parent. Ms. Rodriguez cannot afford to prepay the tuition at Winston Preparatory School (R at 16). If she is not awarded prospective payment of the Winston tuition, Robert will not be able to attend. Ms. Rodriguez could not have waited until there were results from Robert's Winston experience. If she had – there would have been no Winston experience! The Connors case clearly had this kind of dilemma in mind when it established the right of poor people to enjoy the same advantages as the wealthy in the payment of tuition for their disable children. See *Connors v. Mills* 34 F. Supp 2d. 795.

### III. THE EQUITIES FAVOR THE PARENT.

For the school year at issue this case, the DOE failed to conduct a CSE meeting in accordance with Federal and State Law. Consequently the DOE completely failed to provide Robert with a FAPE. Undisputedly there was not any uncooperativeness on the part of Ms. Rodriguez which caused this problem with respect to the 2006-2007 school year. As such, equitable considerations clearly weigh in Ms. Rodriguez's favor. See Application of the Bd. of Educ. of the City Sch. Dist. of the City of Buffalo, Appeal No. 05-030 ("In the absence of evidence demonstrating that the parents failed to cooperate in the development of the IEP or otherwise engage in conduct that precluded the development of an appropriate IEP, equitable considerations generally support a claim of tuition reimbursement." (citation omitted)); Application of the Bd. of Educ. of the Springville-Griffith Inst. Cent. Sch. Dist., Appeal No. 02-036 (finding that, absent showing that parents interfered with school district's ability to have IEP in place at beginning of school year, equitable considerations did not bar award of tuition reimbursement); cf. Warren G., 190 F.3d at 86 (concluding that Carter does not sanction denying parents "arbitrary fraction of reimbursement" where parents' conduct did not prevent district

from preparing appropriate IEP); id. (“In those circumstances it makes little sense to determine the amount of reimbursement not with reference to what is required by the IDEA to provide an appropriate education but by comparing the conduct of the school district with that of the parents . . . .”).

### **CONCLUSION**

In sum, since the DOE admittedly failed to provide Robert with a FAPE, and since Ms Rodriguez placed Robert in an appropriate school and equitable considerations clearly weigh in Ms. Rodriguez’s favor, Ms. Rodriguez is entitled to pre-payment for the cost of Robert’s attendance at the Winston Preparatory School during the 2006–2007 school year.

Ms. Rodriguez satisfies the test for tuition reimbursement set forth by the Supreme Court in Burlington and Carter, entitling her to payment for the cost of Robert’s tuition at the Winston Preparatory School.. The DOE’s failure to provide him with a valid IEP and an appropriate school placement are flagrant violations of federal and state law. Ms. Rodriguez’s decision to enroll Robert in the Winston Preparatory School was a reasonable response to the DOE’s complete abdication of its duty to provide him with a FAPE, and equitable considerations warrant that his attendance costs at Winston Preparatory School paid by the DOE.

Dated: September 19, 2006

LEGAL SERVICES FOR CHILDREN, INC.

Attorneys for Robert Rios

---

BY: WARREN J. SINSHEIMER  
271 Madison Avenue, 17<sup>th</sup> Floor  
New York, New York 10016  
(212) 683-7999 x 222

## TRANSMISSION REPORT

Case 1:07-cv-04711-TPG Document 10-3 Filed 12/10/2007 Page 45 of 80

T360SY00370

F562-A06

TIME : 10-16-'06 10:19

FAX NO.1 :

NAME :

NO.	FILE NO.	DATE TIME	DURATION	PGS	TO	DEPT	MODE	STATUS
614	808	10.16 10:18	01:04	8	17185227376		EC 603	OK

## TRANSMISSION REPORT

Case 1:07-cv-04711-TPG

Document 10-3

T360SY00370

Filed 12/10/2007

F562-A06

Page 46 of 80

TIME

: 10-16-'06 10:21

FAX NO.1

:

NAME

:

NO.	FILE NO.	DATE TIME	DURATION	PGS	TO	DEPT	MODE	STATUS
615	809	10.16 10:20	00:53	8	17187947469		EC 603	OK

# **EXHIBIT D**

**FINDINGS OF FACT AND DECISION**

Case Number: 106010

Student's Name: Robert Rios

Date of Birth: September 6, 1995

District: 11

Hearing Requested By: Parent

Date of Hearing: October 4, 2006

Hearing Officer: Judith T. Kramer, Esq.



NAMES AND TITLES OF PERSONS WHO APPEARED

Warren Sensheimer	Attorney	Parent
Gloria Rodriguez	Mother	
Beth Sugarman	Director of Operations, Winston Preparatory School	Parent
Mark Parent	Chairperson Designee, CSE,	

Case No. 106010

---

**INTRODUCTION**

On October 4, 2006, an impartial hearing was commenced pursuant to the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. 1415 (f) regarding a parental request for Connors tuition payments for Robert R. ("the child") for the 2006-2007 school year. The hearing was held at the Impartial Hearing Office of the Board of Education of the City of New York located at 131 Livingston Street, Brooklyn, New York. The hearing commenced at 10:00 a.m. A list of exhibits that were admitted into evidence is attached to this decision.

**BACKGROUND**

The last placement recommended by the Committee on Special Education ("CSE") as reflected in the child's IEP dated October 7, 2005 ("IEP") is that the child attend a ten month program in a special class with a class ratio of 12:1:1 with the following related services: 1) speech and language, 3:1, 2x30 and 2) counseling, 3:1, 1x30. Id. (Parent's Exhibit 1) On the IEP, the child's classification is still designated as speech and language impaired. Id.

The child was attending P.S. 96 during the 2005-2006 school year. At that time, the parent was not satisfied with P.S. 96 and she decided to look for a new placement for the child. The child's teacher recommended a charter school—P.S 135. The parent did not pursue this recommendation. However, she did not receive any further recommendations for placements from the district for the 2006-2007 school year. In addition, no CSE meeting was held in the spring or summer of 2006 to determine a proper placement for the child. The parent decided to unilaterally place the child in a non-approved private school, Winston Preparatory School ("Winston") for which she now seeks Connors tuition payments.

**THE PARENT'S POSITION**

The parent contends that the Department of Education ("DOE") failed to provide the child with a Free Appropriate Public Education ("FAPE") for the 2005-2006 school year. She further contends that: 1) her unilateral placement of the child at Winston was appropriate, 2) she cooperated with the DOE and 3) she cannot afford to pay the tuition

Case No. 106010

for Winston and needs financial assistance pursuant to Connors for her child to continue there.

### **THE BOARD'S POSITION**

The District concedes that it did not offer the child a FAPE for the 2006-2007 school year. However, it contends that Winston is not an appropriate placement for the child and thus, the parent is not entitled to Connors relief.

### **THE EVIDENCE PRESENTED**

The child is ten years old. When the child was in pre-school at the Rainbow School, he was classified as speech and language impaired and received speech and language services there. (Parent's Exhibit 2) He was reevaluated in December 1999 when he aged out of preschool and was then classified as learning disabled and given speech and language services. Id. In March 2001, a request was made to add counseling. Id. He was also receiving therapy for his panic attacks at Astor Child Guidance Center. Id. in 2002, his school attendance was fair/poor. Id.

At the time of the 2002 evaluation, child was attending P.S. 96 and was in the second grade in a special class with a class ratio of 12:1:1 and he received counseling and speech and language services. Id. He was receiving speech and language therapy. Id. The evaluation was requested by the parent who was dissatisfied with the child's academic performance. Id. Nonetheless, the child remained at P.S. 96 until the end of the fifth grade. (Parent's Exhibit 3) He was evaluated once again in September 2005 as part of a triennial review. Id. It was noted that the child spoke in a very low volume but has made significant progress in all aspects of reading, including comprehension and decoding. Id. His math skills were found to be weaker than his reading skills. Id. His oral language and auditory comprehension was found to be below expected levels. Id.

The placement recommended by the CSE as reflected in the child's IEP dated October 7, 2005 ("IEP") is that the child attend a ten month program in a special class with a class ratio of 12:1:1 with the following related services: 1) speech and language, 3:1, 2x30 and 2) counseling, 3:1, 1x30. Id. (Parent's Exhibit 1) On the IEP, the child's classification is still designated as speech and language impaired. Id.

Case No. 106010

The child remained at P.S. 96 until the end of the 2005-2006 school year when the child completed the fifth grade. At that time, the parent was not satisfied with P.S. 96 and she decided to look for a new placement for the child. (T. 10) The child's teacher advised her that the child could now be placed in a general education class and she recommended a charter school. (T. 11) The parent did not pursue this teacher's recommendation. Id. The parent testified that she cooperated with the DOE throughout the school year. (T. 12) However, she did not receive any further recommendations for placements from the DOE for the 2006-2007 school year. Id. In addition, no CSE meeting was held in the spring or summer of 2006 to determine a proper placement for the child. (T. 18) The parent decided to unilaterally place the child in a non-approved private school, Winston Preparatory School ("Winston") for which she now seeks Connors tuition payments. (T. 13)

The parent testified that the child is "happy at Winston" and that the classes are easy for him. (T. 14) He can do the homework. (T. 15) However, she testified that she has had only two conversations with his teachers since his placement there in September and that the teachers have not advised her of the child's academic achievements. (T. 21)

The tuition at Winston is \$38,750 per year. (Parent's Exhibit 4). The parent presented evidence that the tuition is reasonable based upon the DOE own expenditures per pupil as reflected on its website. (Parent's Exhibit 7) The parent further testified that her expenses—not including food and clothing—are about \$1,000 per month for rent, telephone and cable. Her annual income from her salary is \$35,000 per year and that the child receives an additional \$7,200 per year from SSI. (Parent's Exhibit 6, T. 26) She owns no real property and does not have an automobile. She has not been able to pay any of the tuition on her own but has received a loan from the Fairness Fund based upon an application given to her by Winston. Winston has told the parent "not to worry" about the payments. (T. 29, 31)

Beth Sugarman testified that she was the Director of Operations and Educational Research for Winston. She has a master's degree and is a speech and language pathologist. (T. 33) She has worked at Winston for 9 years and oversees the placement at



Case No. 106010

Winston. She testified that the child started at Winston in September 2006. (T. 34) She did not do the testing of this child but is convinced that Winston is an appropriate placement for the child. (T. 35) Her opinion is based upon one observation of the child, a conversations with Peter Hill, one of the child's teachers, and a conversation with the child's FOCUS teacher who told her that the child has recently begun to participate in class and that "he needs a lot of repetition and information to be presented in slowly and broken down on a consistent basis". (T. 38)

Ms. Sugarman testified that the testing done at Winston was done by the Admissions Director. (T. 42) She also stated that the testing done at Winston confirmed the testing that was previously done of the child during prior evaluations. (T. 43-44) She testified that she did not have the IEP in front of her and that she is unaware that the IEP requires that the child receive speech and language therapy. (T. 48) Thus, although Winston has twelve speech and language therapists on staff, the child is not currently receiving any speech and language therapy as part of his educational program there. (T. 46, 47) She testified that such therapy should be provided to the child elsewhere. (T. 48)

#### CONCLUSIONS OF LAW

Both the IDEA; state law and regulations require that each and every disabled child be provided a FAPE in the least restrictive environment ("LRE") appropriate to meet their individual needs. 20 U.S.C. § 1412 (a)(1)(A); 1412 (a)(5)(A); 34 CFR § 300.550(b); 8 NYCRR § 200.4 (c)(4); 8 NYCRR § 200.6 (a)(1). Nonetheless, where as here, the parent has filed a request for relief, the parent bears the burden of persuasion to show that they are entitled to the remedy they seek. Schaeffer v. West, 546 U.S.---(2005).

First, the parent bears the burden of persuasion to show that the DOE failed to provide the child with a FAPE. If that burden is met, a board of education may be required to pay for educational services obtained for the child by her parent if the parent is able to show that the services selected by the parent is appropriate. If the parents' placement is appropriate, reimbursement will only be granted if, when equitable considerations are factored in, it is determined the cost of reimbursement is appropriate and reasonable. School Committee of the Town of Burlington v. Department of

Case No. 106010

Education, 471 U.S. 359, 370 (1985); Florence County School District Four v. Carter, 510 U.S. 7 (1993). The parents bear the burden of establishing that the cost is reasonable. Schaffer v. Weast, 546 U.S. — (2005). The amount of reimbursement is discretionary, and "total reimbursement will not be appropriate if the court determines that the cost of the private education was unreasonable." Florence County, 510 U.S. at 16. The parent also bears the burden of persuasion to show that equitable considerations for the reimbursement she seeks favors her. Schaffer v. Weast.

In this case, the District's has conceded that it did not offer the child a FAPE in the LRE for the 2006-2007 school year. It contends however, that the parent's placement of the child is not appropriate. Thus, the parent bears the burden of persuasion to show that Winston is an appropriate placement for the child. Id., [See also, Application of a child with a disability, Appeal No. 05-008] In order to meet that burden, the parent must show that Winston offered an educational program that met the student's special education needs. [Burlington, 471 U.S. at 370; Application of a child with a Disability, Appeal No. 05-008; Application of a child with a Disability, Appeal No. 02-027]. To qualify for tuition payments under the IDEA, parents need not show that a private placement furnishes every special service necessary to maximize their child's potential but they must demonstrate that the placement provides "educational instruction specially designed to meet the unique needs of a handicapped child, supported by such services as are necessary to permit the child to benefit from instruction." Rowley, 458 U.S. at 188-89; Frank G. v. Board of Education of Hyde Park, 2006 WL 2077009 (2d Cir.) Nor as the parent's attorney correctly pointed out in his memorandum of law does the private placement have to be the LRE. Rose v. Chester County Intermediate Unit, 1996 WL 238699, at 9 (E.D. Pa. 1996), Application of Child with a Disability, Appeal No. 03-066 (citing Griggs v. Bd. of Education, 882 F.2d 688, 692 (2d Cir. 1989). However, the parent's contention that "proof of whether an IEP meaningfully contributed to the child's education is not altogether proper" is not particularly relevant here. In the instant case, the DOE has conceded prong one. Therefore, the focus here is no longer upon the IEP as the instrument that is designed to bestow a meaningful educational benefit but rather upon

the new placement itself. Thus, it is the parent's burden to show that the placement that she has chosen is designed to provide or is providing meaningful educational benefit.

Only if the Burlington prerequisites are shown can a parent receive prospective relief. Connors v. Mills, 34 F. Supp. 795 (NDNY 1998). In this case, as demonstrated below, the parent has failed to show on the evidence presented that the placement she has unilaterally chosen is appropriate failing to satisfy one of the Burlington prerequisites.

While no one factor is necessarily dispositive in determining whether the parent's unilateral placement is appropriate it must be "reasonably calculated to enable the child to receive educational benefits" prior to granting tuition payments, Rowley, 458 U.S. at 207. As such, grades, test scores, and regular advancement may constitute evidence that a child is receiving educational benefit...." Frank G. v. Board of Education of Hyde Park, 2006 WL 2077009 (2d Cir.) In Connors, the child had been in the placement for which the parent was seeking reimbursement for nine months before the school district agreed to settle the case with the parent. It is unclear from the discussion in the Court's decision in Connors if the district would have or could have settled if it was unconvinced that the Montessori school which the child was attending was providing a meaningful educational benefit to the child.

In this case, the parent placed the child at Winston in September 2006. At the time of the hearing, she was unable to offer any proof that child had made any tangible progress at Winston during the first month of school. In fact, she had not received any reports of academic progress from his teachers. She offered no documentary evidence and no testimony from his teachers about the child's progress. This undoubtedly due to the fact that he has not been in the placement long enough to make such an assessment. Nonetheless, the absence of such evidence is critical to this determination. Moreover, the only other witness presented by the parent, Ms. Sugarman, did not personally test the child and only observed the child once. She did not give any meaningful testimony regarding the child academic progress. Thus, her conclusory statement that she was convinced that the placement of the child at Winston is appropriate is not persuasive at this time. The only sliver of light shed on this issue by Ms. Sugarman was her testimony

that the child has begun participating in class while he was initially too shy to do so. This evidence is too thin without more to grant an award of tuition payments.

In addition, throughout the child's academic career as shown in the two evaluations which the parent did offer into evidence as well as her own testimony that the child has been receiving speech and language therapy since pre-school, it is abundantly clear that a primary educational need of the child has been and continues to be speech and language therapy. Ms. Sugarman testified that all of the testing given to the child by Winston staff confirmed all of the prior test findings. Notwithstanding that testimony, she never knew that the child's IEP mandated speech and language therapy for the child and was unaware of the child's need for speech and language therapy. Given that there are twelve speech and language therapists on staff at Winston, the child should be, but has not been offered, speech and language therapy as part of his educational program there. The absence of a service may not automatically mean that the placement is inappropriate. However, where, as here, the child is not receiving a related service which he has been receiving since pre-school, the absence of speech and language from his current program is significant in the determination of whether Winston is appropriate. This is true particularly where there has been no evidence offered by the parent to show that the child no longer needs this service. Thus, the absence of speech and language therapy from the child's program at Winston was also a factor considered in reaching the determination that the program the child is receiving at Winston is not appropriate.

Although the parent has demonstrated that: 1) she has continually cooperated with the DOE, 2) the tuition at Winston is reasonable and thus, the equities favor the parent, I am denying the parent's request for Connors tuition payments at this time. It is apparent that the child will be able to continue at Winston for the immediate future even though the parent is clearly in need of financial assistance. However, Connors relief may not be granted because the parent has failed to establish that the child's placement at Winston is appropriate. Such denial is, of course, without prejudice and may be renewed after the child has been at Winston for a longer period of time when the parent may be in a better



position to present evidence that Winston is providing the child with educational benefits and is thus, appropriate for the child.

Based upon the forgoing reasons, it is ordered that the parent's request for Connors relief as well as for tuition payments of any kind is denied without prejudice.

Dated: October 23, 2006

*Judith T. Kramer, Esq.*  
JUDITH T. KRAMER, ESQ.  
Impartial Hearing Officer

JTK:nn

**PLEASE TAKE NOTICE**

Within 35 days of the date of this decision, the parent and/or the New York City Department of Education has a right to appeal the decision to the State Review Officer of the New York State Education Department under Section 4404 of the Education Law and the Individuals with Disabilities Education Act.

"The notice of intention to seek review shall be served upon the school district not less than 10 days before service of a copy of the petition for review upon such school district, and within 25 days from the date of the decision sought to be reviewed. The petition for review shall be served upon the school district within 35 days from the date of the decision sought to be reviewed. If the decision has been served by mail upon petitioner, the date of mailing and the four days subsequent thereto shall be excluded in computing the 25- or 35-day period." (8NYCRR279.2(b)) Failure to file the notice of intention to seek review is a waiver of the right to appeal this decision.

Directions and sample forms for filing an appeal are included with this decision. Directions and forms can also be found in the Office of State Review website: [www.sro.nysed.gov/appeals.htm](http://www.sro.nysed.gov/appeals.htm)

## **EXHIBIT LIST**

### **Parent's Exhibits**

- 1- IEP dated 10/7/05, 14 pp.
- 2- Educational Evaluation dated 9/26/02, 6pp.
- 3- Psycho-educational evaluation dated 9/19/05, 4pp.
- 4- Enrollment Agreement for Winston Preparatory School, 1p.
- 5- Letter to Region 2 dated 8/17, 2006, 1p.
- 6- US Income tax return dated 2005, 5pp.
- 7- Internet document from DOE website re: public school expenditures, 1p.

# EXHIBIT E

# NEW YORK CITY BOARD OF EDUCATION INDIVIDUALIZED EDUCATION PROGRAM

THIS IEP INCLUDES:  
☐ Transition  
☐ Interim Services Plan

## CONFERENCE INFORMATION

CSE Case# 11-33880  
 Home District 11 Service District 11  
 Date 10.07.05  
 Type ER

## STUDENT INFORMATION

Name ROBERT RIOS  
 Address 679 WARING AVENUE APT. 4H BRONX, NY 10467  
 Phone (718) 654-5220  
 Language(s) Spoken/Mode of Communication ENGLISH  
 Primary Agency with whom student is involved NONE  
 Name of Contact  
 NYC ID# 268-366-903 Date of Birth 9/6/1995 Age 10 Gender MALE  
 \*Age as of the date of the conference.  
 Spanish LAB Year Grade FOURTH  
 Phone Agency Case #

## PARENT/GUARDIAN INFORMATION

Name GLORIA RODRIGUEZ  
 Address 679 WARING AVENUE APT. 4H BRONX, NY 10467  
 Phone (Home) (718) 654-5220  
 Preferred Language/Mode of Communication ENGLISH  
 Relationship to Student MOTHER  
 Interpreter Required ☐ Yes ☒ No

## SPECIAL MEDICAL/PHYSICAL ALERTS

The student has ☐ medical conditions and/or ☐ physical limitations which affect his/her ☐ learning ☐ behavior and/or ☐ participation in school activities.

The student requires ☐ medication and/or ☐ health care treatment(s) or procedure(s) during the school day.  
 Other alerts: *Food allergies: Seafood, milk products, asthma*

## SUMMARY OF RECOMMENDATIONS

Recommended Services

*Special Class with related services*

Eligibility ☒ Yes ☐ No

Classification of Disability

*Speech and Language Impaired*

Staffing Ratio

*12:1:1*

Twelve Month School Year ☐ Yes ☒ No Recommended Services for the Twelve Month School Year

Staffing Ratio

☐ Program Accessibility\*

☒ Adaptive Phys. Ed.\*

☐ Related Services\*

☐ Special Education Transportation - Comment

Other Recommendations (Check all that apply)

☐ Bilingual Instruction

☐ Monolingual Services with ESL

☐ Monolingual Services without ESL

Students who are blind or visually impaired:

Braille instruction needed ☐ Yes ☒ No

Students who are deaf or hard of hearing:

Language of Instruction

Mode of Communication

\*Details are provided in relevant sections of IEP.

Oct. 7, 2005

## CONFERENCE INFORMATION

Referral Type:	<input type="checkbox"/> Initial <input checked="" type="checkbox"/> Triennial	<input type="checkbox"/> Annual Review <input type="checkbox"/> Requested Review	Conference Type:	<input checked="" type="checkbox"/> EPC <input type="checkbox"/> CSE Review	<input type="checkbox"/> Annual Review <input type="checkbox"/> CPSE Review
----------------	---	---	------------------	--	--

Please note that your signature reflects your participation at the conference and does not necessarily indicate agreement with the Individualized Education Program.

Signature/Title	Role (Indicate if Bilingual)	Signature/Title	Role (Indicate if Bilingual)
<i>Y. Garcia Rodriguez</i>	Parent/Legal Guardian	<i>Chris Valley</i>	Parent/Legal Guardian
	District Representative		Special Education Teacher or Related Service Provider
	General Education Teacher		Parent Member (CPSE/CSE)
	Student	<i>Ruth Kennedy</i>	Guidance Counselor 10-7-05
	Education Evaluator		Other
	School Psychologist		Other
	School Social Worker		Other

Use an asterisk (\*) to signify the participant who interprets the instructional implications of evaluation results.  
Use the letter (T) to signify participation by teleconference.

Indicate Modifications	<input type="checkbox"/> Initiate Service <input type="checkbox"/> Modify Service	Conference Result	<input type="checkbox"/> Change Recommended Service <input checked="" type="checkbox"/> No Change
------------------------	--	-------------------	--

Projected Date of Initiation of IEP	10/7/05	Initiation, Duration and Review of IEP	Projected Date of Review of IEP	10/7/06
Duration of Services	one year			

Date Notice of Meeting Sent	September 23, 2005	Contacts with Parent/Legal Guardian	Date IEP and Notice of Recommendation
Date of Follow-up (if any)	Oct 3, 2005	<input type="checkbox"/> Given to Parent <input checked="" type="checkbox"/> Sent to Parent	
Type of Follow-up	<input type="checkbox"/> Letter <input type="checkbox"/> Telephone		Oct. 14, 2005

CSE # 11-33880

Student Robert RiosNYC ID# 268-366-903Date of Conference 10-07-04**ACADEMIC PERFORMANCE AND LEARNING CHARACTERISTICS**

Describe the student's present levels of academic achievement, language development, cognitive development and learning style in English and the other than English language for LEP students. Discuss how the student's disability affects his/her involvement and progress in the general curriculum or, for preschool students, as appropriate, how the student's disability affects participation in appropriate activities.

**PRESENT PERFORMANCE:**

Robert a quiet somewhat shy youngster presenting with preliteracy work. He has some good early written skills and had difficulties presenting at first. However he has made significant progress in all aspects of reading including decoding and comprehension. Both skills are more challenged. Expressing writing skills are below grade expectations.

**READING and WRITING**

Area	Date	Test/Evaluation	Score	Instructional Level
Decoding	9/19/05	Woodcock Johnson 3	3.3	Third Grade
Reading Comprehension	9/19/05	Woodcock Johnson 3	3.7	Early Third Grade
Listening Comprehension	9/19/05	Woodcock Johnson 3	2.1	Beginning Second Grade
Writing	9/19/05	Writing Sample	2.5	Mid Second Grade

**MATH**

Area	Date	Test/Evaluation	Score	Instructional Level
Computation	9/19/05	Woodcock Johnson 3	2.4	Mid Second Grade
Problem Solving	9/19/05	Woodcock Johnson 3	1.6	Mid First Grade
ORAL Comprehension	9/19/05	Woodcock Johnson 3	2.2	Mid Second Grade

**ACADEMIC MANAGEMENT NEEDS**

(Environmental modifications and human/material resources)

Robert continues to need a self-contained classroom to help develop math skills and language skills and expressive writing abilities. Work habits need improvement.



Student Robert Rios

NYC ID# 268-366-903

CSE # 11-33880

Date of Conference

10.07.05

## SOCIAL/EMOTIONAL PERFORMANCE

Describe the student's strengths and weaknesses in the area of social and emotional development in English and the other than English language for LEP students. Consider the degree and quality of the student's relationships with peers and adults, feelings about self and social adjustment to school and community environments. Discuss how the student's disability affects his/her involvement and progress in the general curriculum or, for preschool students, as appropriate, how the student's disability affects participation in appropriate activities.

### PRESENT PERFORMANCE:

Robert is a friendly youngster who tends to be shy especially with adults. He often has self-esteem and feelings of inadequacy impact on his learning. Robert responds well to reassurance and encouragement.

### BEHAVIOR AND THE INSTRUCTIONAL PROCESS

- ☐ Behavior is age appropriate.
- ☒ Behavior does not seriously interfere with instruction and can be addressed by the ☐ general education and/or ☒ special education classroom teacher.
- ☐ Behavior seriously interferes with instruction and requires additional adult support.
- ☐ Behavior requires highly intensive supervision.

Describe present levels of support including personnel responsible for providing behavioral support.

Special Education Teacher  
Related Services Personnel  
Counselor

### SOCIAL/EMOTIONAL MANAGEMENT NEEDS (Environmental modifications and human/material resources)

Strong encouragement to help improve self-esteem as well as  
positive behavior for students

A behavior intervention plan has been developed. ☐ Yes ☐ No

Student Robert RiosNYC ID# 268-366-903 CSE # 11-33880

Date of Conference

11-07-05**HEALTH AND PHYSICAL DEVELOPMENT**

Describe the student's health and physical development including the degree or quality of the student's motor and sensory development, health, vitality and physical skills or limitations which pertain to the learning process, behavior and participation in physical education or other school activities. Discuss how the student's disability affects his/her involvement and progress in the general curriculum or, for preschool students, as appropriate, how the student's disability affects participation in appropriate activities.

**PRESENT HEALTH STATUS AND PHYSICAL DEVELOPMENT:**

*Robert has food allergies to milk and peanut and is allergic to the pump oil. He needs to be kept at home.*

**MEDICAL/HEALTH CARE NEEDS**

During the school day, the student requires:

Medication

(If yes, functionally describe the condition for which medication is required.)

☐ Yes ☒ No

Treatment(s) or other health procedure(s)

(If yes, functionally describe the condition for which treatment(s) or procedure(s) are required.)

☐ Yes ☒ No

Health as a related service

(If yes, specify in related service recommendations.)

☐ Yes ☒ No

**PHYSICAL NEEDS**

The student ☐ does ☒ does not have mobility limitations.  
(If yes, functionally describe the limitation(s).)

The student requires:

Accessible program

☐ Yes ☒ No

Adaptive physical education

☒ Yes ☐ No(If yes, indicate staffing ratio: 12:1:1)

Assistive technology device(s)

☐ Yes ☒ No

Assistive technology service(s)

☐ Yes ☒ No

(If assistive technology device(s) or service(s) are required, specify in management needs.)

**HEALTH/PHYSICAL MANAGEMENT NEEDS**

(Environmental modifications, human/material resources or specialized equipment)

*None required*



Student ROBERT RIOS

NYC ID# 268-366-903

CSE # 11-33880

Date of Conference

*Feb 7, 2008*

## ANNUAL GOALS AND SHORT-TERM OBJECTIVES

There will be \_\_\_\_\_ report(s) of progress per year.

### ANNUAL GOAL

ROBERT WILL IMPROVE HIS CALCULATION SKILLS

### SHORT-TERM OBJECTIVES

ROBERT WILL INCREASE HIS FUND OF NUMBER FACTS IN ADDITION, SUBTRACTION AND MULTIPLICATION WITH 90% ACCURACY.  
ROBERT WILL COMPLETE 10 EXAMPLES WITH REGROUPING WITH 90% ACCURACY.  
ROBERT WILL WORK ON MATH EXAMPLES IN A CAREFUL MANNER AND DECREASE HIS NUMBER OF CARELESS ERRORS WITH 90% ACCURACY.

### ANNUAL GOAL

ROBERT WILL IMPROVE HIS APPLIED PROBLEM SKILLS

### SHORT-TERM OBJECTIVES

ROBERT WILL BE ABLE TO IDENTIFY ALL COINS AND THEIR EQUIVALENT AMOUNTS WITH 100% ACCURACY.  
ROBERT WILL BE ABLE TO USE COIN AMOUNTS IN WORD PROBLEMS WITH 90% ACCURACY.  
ROBERT WILL BE ABLE TO IDENTIFY THE CORRECT OPERATION AND SEQUENCE OF OPERATIONS NECESSARY TO COMPLETE APPLIED WORD PROBLEMS WITH 80% ACCURACY.

### ANNUAL GOAL

ROBERT WILL IMPROVE HIS PHONOLOGICAL PROCESSING SKILLS

### SHORT-TERM OBJECTIVES

WHEN PRESENTED WITH 20 MULTI-SYLLABIC OR COMPOUND WORDS ROBERT WILL BE ABLE TO APPLY SYSTEMATIC SEGMENTING SKILLS TO BREAK APART THE SOUND PARTS WITH 80% ACCURACY.  
WHEN PRESENTED WITH 20 WORDS HE WILL BE ABLE TO APPLY DECODING SKILLS TO SEGMENT AND BLEND WORD PARTS WITH 80% ACCURACY.  
WHEN PRESENTED WITH 20 WORDS AT HIS FUNCTIONAL LEVEL ROBERT WILL BE ABLE TO IDENTIFY VOWEL SOUND AND RULE WITH 80% ACCURACY.

### ANNUAL GOAL

ROBERT WILL IMPROVE HIS READING COMPREHENSION SKILLS

### SHORT-TERM OBJECTIVES

WHEN PRESENTED WITH 5 STORIES AT HIS FUNCTIONAL LEVEL ROBERT WILL BE ABLE TO STATE THE SEQUENCE OF EVENTS WITH 90% ACCURACY.  
WHEN PRESENTED WITH 5 STORIES AT HIS FUNCTIONAL LEVEL ROBERT WILL BE ABLE TO DRAW CONCLUSIONS BASED ON INFORMATION FROM THE STORY WITH 80% ACCURACY.  
WHEN PRESENTED WITH 5 STORIES AT HIS FUNCTIONAL LEVEL HE WILL BE ABLE TO STATE THE MAIN IDEA WITH 90% ACCURACY.  
WHEN PRESENTED WITH 5 STORIES AT HIS FUNCTIONAL LEVEL ROBERT WILL BE ABLE TO APPLY READING COMPREHENSION STRATEGIES INCLUDING RE-READING, SELF-QUESTIONING, SUMMARIZING AND PARAPHRASING WITH 70% ACCURACY.

Student ROBERT RIOS

NYC ID# 268-365-903

CSE # 11-33890

Date of Conference

Oct 7, 2005

## ANNUAL GOALS AND SHORT-TERM OBJECTIVES (cont.)

There will be \_\_\_\_\_ report(s) of progress per year.

### ANNUAL GOAL

ROBERT WILL IMPROVE HIS EXPRESSIVE VOCABULARY

### SHORT-TERM OBJECTIVES

ROBERT WILL IDENTIFY THREE NEW WORDS FROM HIS READING AND USE THEM IN WRITTEN SENTENCES WITH 90% ACCURACY.  
ROBERT WILL IDENTIFY A NEW WORD EACH WEEK FROM HIS EXPERIENCE AND USE THE NEW WORD IN A WRITTEN SENTENCE WITH 90% ACCURACY.

ROBERT WILL IDENTIFY 5 NEW WORDS FROM HIS AREA OF INTEREST AND PRESENT THESE WORDS AND THEIR MEANING TO THE CLASS WITH 90% ACCURACY.

### ANNUAL GOAL

ROBERT WILL IMPROVE HIS WRITTEN EXPRESSION SKILLS

### SHORT-TERM OBJECTIVES

ROBERT WILL WRITE 5 SENTENCES WITH CORRECT PUNCTUATION AND SPELLING WITH 90% ACCURACY.  
ROBERT WILL WRITE 5 SENTENCES EACH WITH TWO DETAILS ON THE TOPIC PRESENTED WITH 80% ACCURACY

ROBERT WILL COMPOSE 2 PARAGRAPHS WITH TOPIC SENTENCE SUPPORTING DETAILS AND CONCLUDING SENTENCE WITH 90% ACCURACY.

60-7-05

Student Robert Rios NYE ID# 268-366-903 OBE # 11-33880 Date of Conference

# ANNUAL GOALS AND SHORT-TERM OBJECTIVES

There will be reports of progress per year using the coding system shown below.

ANNUAL GOAL:	1st	2nd	3rd	4th	5th	6th	7th	8th
<u>Robert will successfully participate in the Adaptive Physical Education program.</u>								
PROGRESS:								
Methods of Measurement:								
Report of Progress:								
Progress Toward Annual Goal:								
Reasons for not Meeting Annual Goal:								

## SHORT-TERM OBJECTIVES:

Robert will be able to jump forward and over the foot of Gross Motor Development Band of 5 times.  
Robert will be able to kick a ball as per the BMD 70% of the time.  
Robert will be able to strike a ball w/o bat as per the BMD with 50 accuracy.

ANNUAL GOAL:	1st	2nd	3rd	4th	5th	6th	7th	8th
PROGRESS:								
Methods of Measurement:								
Report of Progress:								
Progress Toward Annual Goal:								
Reasons for not Meeting Annual Goal:								

## SHORT-TERM OBJECTIVES:

## EXPLANATION OF CODING SYSTEM

METHODS OF MEASUREMENT	REPORT OF PROGRESS	PROGRESS TOWARD GOAL	REASONS FOR NOT MEETING GOAL
1. Teacher Made Initiatives 2. Standardized Tests 3. Class Activities 4. Portfolio 5. Teacher Observation 6. To achieve teacher observations	1. Not applicable during this grading period 2. No progress made 3. Little progress made 4. Progress made goal not met 5. Goal met	A. Applicable grading goal B. Do not applicable (loading goal) C. Goal met	1. Time limit needed 2. Exceeded a portion of learning 3. At (approx) not completed 4. Other (specify)
			1st 2nd 3rd 4th 5th 6th 7th 8th

When a review of your child's educational program occurs every year, please be advised that you have a right to request a review of your child's program at any time.

The student's performance in approaching his/her promotion criteria as set forth on Page 8 of this IEP:

For students who are not anticipated to meet their annual goals and/or promotion criteria: We recommend that the IEP Team be reconvened:

Page 8

Student ROBERT RIOS

NYC ID# 268-366-903

CSE #

Date of Conference

10.7.05

## ANNUAL GOALS AND SHORT-TERM OBJECTIVES

There will be \_\_\_\_\_ report(s) of progress per year.

### ANNUAL GOAL

ROBERT WILL DEMONSTRATE AN IMPROVEMENT IN LANGUAGE NECESSARY TO SPEAK AND LISTEN FOR INFORMATION, UNDERSTANDING, EXPRESSION AND SOCIAL INTERACTION

### SHORT-TERM OBJECTIVES

ROBERT WILL DEMONSTRATE THE ABILITY TO COMPREHEND AND USE PREPOSITIONS: IN FRONT OF, BEHIND, BEFORE AND AFTER

CRITERIA: WITH 85% MASTERY

ROBERT WILL DEMONSTRATE AN UNDERSTANDING AND USE OF NOUNS, VERBS AND ADJECTIVES AT HIS INSTRUCTIONAL LEVEL

CRITERIA: WITH 70% MASTERY

ROBERT WILL DEMONSTRATE THE ABILITY TO COMPREHEND AND USE DEMONSTRATIVE PRONOUNS (THIS, THAT, THOSE, THESE)

CRITERIA: WITH 70% MASTERY

CRITERIA: WITH 75% MASTERY ROBERT WILL DEMONSTRATE THE ABILITY TO COMPREHEND AND EXPRESS CATEGORIZATION TECHNIQUES IN PRESENTED SUBJECT AREAS

CRITERIA: WITH 80% MASTERY

ROBERT WILL DEMONSTRATE THE ABILITY TO RETAIN AND FOLLOW THE SEQUENCE OF THREE OR MORE STEP DIRECTIONS PRESENTED ORALLY

CRITERIA: WITH 75% MASTERY

Student Robert Lior

NYC ID# 268366903 CASE #

Date of Conference

10.7.05

# ANNUAL GOALS AND SHORT-TERM OBJECTIVES

There will be \_\_\_\_\_ reports of progress per year using the coding system shown below.

ANNUAL GOAL:	PROGRESS:	1st	2nd	3rd	4th	5th	6th	7th	8th
<u>Through Counseling, Robert will accept responsibility for completing homework/ classwork assignments.</u>	Methods of Measurement								
	Report of Progress								
	Progress Toward Annual Goal								
	Reasons for not Meeting Annual Goal								

## SHORT-TERM OBJECTIVES:

Robert will turn in assignments as required by his teacher.  
Robert will state his role, when he does not complete assignments.  
Robert will share in counseling his feelings about accepting responsibility for classroom, homework, assignments.

ANNUAL GOAL:	PROGRESS:	1st	2nd	3rd	4th	5th	6th	7th	8th
<u>Through Counseling, Robert will improve self-image/self-confidence.</u>	Methods of Measurement								
	Report of Progress								
	Progress Toward Annual Goal								
	Reasons for not Meeting Annual Goal								

## SHORT-TERM OBJECTIVES:

Robert will share 3 or more positive thoughts about himself at least once per week in Counseling.  
Robert will share his accomplishments with group members.  
Robert will identify and share the importance of projecting and feeling self-confidence.

METHODS OF MEASUREMENT		REPORT OF PROGRESS		PROGRESS TOWARD GOAL		REASONS FOR NOT MEETING GOAL	
1. Teacher Note Materials	4. Performance Assessment Task	1. Not applicable during this grading period	A. Applicable progress goal	1. More time needed			
2. Student Self-report (Title)	5. Check (Yes/No)	2. No progress made	B. Do not anticipate reaching goal	2. Excessive absence or tardiness			
3. Other (Specify)	6. Verbal Evaluation	3. Little progress made	C. Goal not met	3. Assignment not completed			
4. Portfolio	7. Other (Specify)	4. Progress made; goal not yet met		4. Other (Specify)			
5. Teacher/Provider Observations		5. Goal met					

Write a review of your child's educational progress every year prior to attend that you have a right to request a review of your child's progress at any time.

The student's performance is approaching his/her promotion criteria as set forth on Page 9 of the IEP.

For student(s) who are not anticipated to meet their annual goals and/or promotion criteria: We recommend that the IEP Team be reconvened:



Date of Conference

Student Robert Rios

# SCHOOL ENVIRONMENT AND SERVICE RECOMMENDATIONS

## GENERAL EDUCATION ENVIRONMENT

[illegible]

### SPECIAL CLASS ENVIRONMENT

SPECIAL CLASS ENVIRONMENT					
Area of Instruction	Language(s) or Communication Mode	Periods per week	Special Class and Staffing Ratio	Supports	Reason for Non-Participation in General Education Environment
All	English	All	12:1:1	Related Services: Counseling Speech and Language	Due to difficulties with oral language and comprehension
				Styrene	math and weak work habits prevent
					excesses a self-control
					disincentive to access
					the curriculum

Student Robert Rios

CSE # 11-33880

NYC ID# 268-366-903

Date of Conference

10.7.05

# OTHER PROGRAMS/SERVICES CONSIDERED AND REASONS FOR REJECTION

Provide an explanation of the programs/services considered and the reason for rejection. Specify why the student can not achieve the goals of his/her IEP with a general education program with the assistance of supplementary aids and services.

General education with Special education thereby support  
 services has considered and reported as fully  
 has deficits in language processing attention and  
 memory and math calculation. In fact recommends  
 more support than is available in the environment  
 A Special class in a Special school with a  
 facilitator was considered and rejected as too  
 restrictive a setting

Second Language Instruction: If the student is exempt from second language instruction, explain why:

Student: Robert Rios NYC ID# 268-366-903 CSE # 11-33880 Date of Conference Oct. 7, 2005  
**PARTICIPATION IN SCHOOL ACTIVITIES, RELATED SERVICE RECOMMENDATIONS  
 AND PARTICIPATION IN ASSESSMENTS**

**PARTICIPATION IN SCHOOL ACTIVITIES**  
 If the student cannot participate in lunch, assemblies, trips and/or other school activities with non-disabled students, indicate the activity and reason(s) for non-participation.

Full Participation

**RELATED SERVICE RECOMMENDATIONS**

Status*	Related Service	Language of Service	Location**	Sessions/ Week	Duration	Group Size
C	Counseling	English	Separate	1	30	3
C	Speech and Language	English	Separate	2	30	3

\* Indicate status of recommendation: Initiate; Continue; Modify; or Eliminate.

\*\* Indicate whether service is provided outside the general education classroom.

**PARTICIPATION IN ASSESSMENTS**

- ☐ The student WILL PARTICIPATE in State and local assessments.  
☐ Without Accommodations  
☒ With Accommodations  
 Describe accommodations, if any, that will be used consistently throughout the student's educational program:

Extended time by one and a half  
Questions and good re-read  
Questions and re-read

In addition to Alternative Assessment, describe how the student will be assessed:

**PROMOTION**

Promotion ☐ Standard Criteria ☒ Modified Criteria\*

\*Describe the modified promotion criteria:

Robert will meet Standard Promotional criteria with the following modifications:  
Robert will meet 70% of the Standard grade ELP standards and 75% of the Math standards  
as evidenced by student work, grades and assessments



# EXHIBIT F

### EDUCATIONAL EVALUATION

Name: Robert Done  
Date of birth: 9/6/95  
OSIS: 268-366-903  
CSE #: 11-33880

Examiner: M. Pappas  
Exam type: Re-Eval  
School: PS 76  
Grade: 2-435  
Program: 12:1:1

Date of Report: 9/26/02

**REASON FOR REFERRAL:** Robert is a seven year old youngster who attends a second grade 12:1:1 class at PS 76. He receives Speech and Language therapy as part of his educational program. Robert's mother requested this evaluation due to a lack of academic progress. This is a requested re-evaluation.

**BACKGROUND INFORMATION:** Robert attended the Rainbow Preschool and received Speech and Language services. He was reevaluated 12/99 as a result of aging out of preschool. Robert was classified Learning Disabled and placed in a MIS IV class with Speech and Language services. A Type 3 Recommendation was requested 3/01 to add Counseling. Robert passed the school vision and hearing screening (9/23/02). Special alerts indicate that Robert has some allergies and takes medication as needed. He also has panic attacks and receives therapy at Astor Child Guidance Center. Robert's school attendance is fair/poor.

The teacher reports that Robert relates better to peers than to adults. The teacher rates Robert as Good in the areas of Making Friends, Willingness to share, Classroom duty, Group Participation, and Responsibility for homework, as Fair in the areas of Helping others, Self-reliance, and Completing an Activity, and as Poor in the areas of Listening Skills, and Attention span. The teacher states that Robert is frequently withdrawn and shy, occasionally aggressive, and over-anxious, and has Fair Self Control. Academically, the teacher states that Robert is on the Kindergarten level in both Reading and Mathematics. She states that sometimes Robert reads well on a kindergarten level. She reports that Robert understands spoken language quite well at times and at other times, totally ignores it. He talks very little to adults, but speaks often to his peers. Robert seems to have an adequate fund of general information. He remembers what he has learned short term. Sometimes he just refuses to work. His stubbornness, daydreaming and unfocused behavior inhibit his academic achievement.

READING CONTINUED: or any other vowel sounds. He was unable to combine known sounds.

The Spache Diagnostic Reading Scale was administered. Robert achieved a word recognition score on the 1.4 grade equivalent. However, he was unable to read a passage on that level.

A preprimer story was read to Robert. He was unable to answer any comprehension questions correctly.

MATHEMATICS: The Woodcock Johnson Revised (WJ-R) and the Brigance Inventory of Early Development were administered. On the WJ-R Broad Mathematics, Robert received a standard score of 45 and a percentile rank of 0.1. On the Applied Problems subtest, Robert received a standard score of 65, a K.2 grade equivalent and a percentile rank of 01. On the Calculation subtest, Robert received a standard score of 33, a K.0 grade equivalent and a percentile rank of 0.1. All scores place him in the Lower Extreme range of functioning.

Robert was able to count by rote to 39 (6.3 A.E.). He was able to demonstrate number concepts to 10. (6.3 A.E.). Robert was able to read numerals to 20. (6.3 A.E.). He was able to write numerals to 10. (6.3 A.E.). Robert was not able to tell time or identify any coins. He was able to add numbers to 5.

SUMMARY: Robert is a seven year old youngster who attends a second grade 12:1:1 class at PS 76. He receives Speech and Language therapy as part of his educational program. Robert's mother requested this evaluation due to a lack of academic progress. This is a requested re-evaluation.

The current assessment reveals Robert's academic skills range from the Lower Extreme to the Well Below Average range of functioning. Reading comprehension, Mathematics and Writing skills fall within the Lower Extreme range of functioning. Reading Decoding skills fall within the Well Below Average range of functioning. Robert is very fidgety and often needs refocusing. He is easily frustrated and guesses or gives up when he doesn't know the answer. Final recommendation awaits a team conference.

*Midge Pappas*

Midge Pappas  
Education Evaluator

# EXHIBIT G

### Comprehensive Psychoeducational Evaluation

Name of Student: Robert Rios  
Date of Birth: 9/6/1995  
School/Grade: PS96/Fifth Grade  
Program: Special Class 12:1:1  
Identification #: 268366903  
CSE #: 11-33880

DATE OF EVALUATION: 9/19/05

Tests Administered: Clinical Interview, Review of Records, Consultation with Teacher, Wechsler Scale-Wechsler Abbreviated Scales of Intelligence, Woodcock Johnson Tests of Achievement-Third Edition, Writing Sample, Figure Drawing, Sentence Completion

Reason for Referral: This is a triennial evaluation of Robert Rios who currently attends a special class and receives counseling and speech and language as related services. He is classified speech and language impaired.

Background: According to the social history update of September 19, 2005 Robert is described by his mother as a cooperative and helpful youngster who is close to his older sister. Ms. Rodriguez feels he has made progress in his present program but still needs more help with reading and with his confidence. His mother did state that Robert has health issues including asthma and food allergies, which caused a number of absences. His teacher describes him as a youngster who tends to give up easily and can be dependent on others. He gets along with his peers and is respectful towards adults. His decoding skills have improved and the teacher estimates reading skills at mid third grade level with math skills more delayed.

Behavioral Observations: Robert, a slender slight appropriately groomed youngster, easily accompanied this examiner. He related in a shy somewhat withdrawn manner and spoke in such a low tone that it was difficult to hear him unless you continually asked him to speak up. Informal expressive language appeared somewhat delayed as he spoke in unelaborated sentences and often had to be encouraged to add detail to his responses. A language sample indicated delays in both semantics (vocabulary) and syntax as well as word retrieval difficulties. Robert was unable to recall either his address or telephone number. He did describe his family as consisting of his mother, father and three sisters, two of whom are in Puerto Rico. He reported that he has most trouble with math and he enjoys free time, playing outside and reading. Robert would like to be a veterinarian when he grows up. He did mention that he has allergies and asthma and uses the pump when it is required. Robert also mentioned that he often has headaches.

Work habits during the assessment were problematic as Robert worked very slowly, was hesitant when initiating tasks and needed a great deal of encouragement and reassurance to persist at his work. In addition he had some difficulties picking up on salient details of problems or tasks (which details are important). Robert often became "stuck" on a problem and had to be guided to move along. He often spent unproductive time reworking tasks and could not judge how long to work at a various items. However he

always attempted to complete the items presented and seemed to enjoy the individual attention that a testing situation affords.

**Cognitive Functioning:** Robert was administered the Wechsler Abbreviated Scales of Intelligence to obtain a measure of reasoning in both verbal and perceptual areas of functioning. Following are test results:

Verbal Subtests	T Scores (50=average)
Vocabulary	39
Similarities	37
Performance Subtests	T Scores (50=average)
Block Design	42
Matrix Reasoning	42

Robert received a verbal score of 82 (12<sup>th</sup> percentile, borderline range), a performance score of 86 (18<sup>th</sup> percentile, low average range) and a full scale score of 83 which places overall intellectual functioning in the low average range.

Verbal reasoning skills including his ability to form concepts, generalize from particulars and see similarities in events or objects were assessed at low average range. Vocabulary knowledge was relatively strong suggesting potentially stronger expressive speech. Perceptual reasoning abilities are also close to age expectancy.

**Social and Emotional Functioning:** Robert is a friendly youngster who tends to be shy and a bit withdrawn. Difficulties with self esteem and feelings of inadequacy impact on functioning. He is a youngster who is fearful of making errors and receiving criticisms. He needs a great deal of reassurance to take chances due to underlying feelings of vulnerability and insecurity. Robert needs to develop feelings of mastery and responsibility. Social skills seem to be developing adequately.

*based on what?*

**Educational Functioning:** Robert was administered selective subtests of the Woodcock Johnson Test of Achievement-Third Edition. Following are test results:

**Letter-Word Identification:** This subtest requires the youngsters to read increasing difficult words in isolation and measures sight word vocabulary as well as decoding and word attack skills. Robert has made strides in this area and has a substantial sight word vocabulary. Decoding skills are developing although he needs more support in structural analysis and with diphthongs and digraphs. He received a grade score of 3.3 in this area.

**Reading Fluency:** On this subtest the student is required to read simple sentences and decide whether they are true or false. It is a measure of reading speed and accuracy. Reading fluency is an important measure of a youngster's ability to understand what he reads and keep up in class. He received a grade score of 2.4 on this subtest. Robert tends to process information slowly and he has trouble with sustaining his performance.

**Story Recall:** On this subtest the youngster hears a series of stories and he must repeat the story and story details. This is a measure of auditory recall and auditory attention. It is reflective of a student's ability to retain oral information. Robert received a grade score of 2.1 on this subtest. He is a student who would do best with information presented in more than the oral modality (ie, directions written and administered orally as well as instructions repeated).

**Spelling:** On the spelling subtest the student is required to spell words in the student record booklet that is presented to him orally. Skills required on this task include auditory attention, encoding and decoding skills as well as phonemic awareness. Robert did fairly well on this subtest and received a grade score of 3.1.

**Passage Comprehension:** This subtest requires the student to supply a missing word in a passage that he reads. It requires phonological processing, comprehension skills, vocabulary knowledge and ability to form inferences. Robert did fairly well on this task and would have done better but he made many decoding errors and lost the meaning of what he was reading (for example he read last for least, proud instead of produces). He was able to read in a smooth fluent style. Robert received a grade score of 3.7 on this subtest.

#### Mathematics:

**Calculation:** The youngster is presented with traditional math problems which he has to solve in his record booklet. Robert worked on these problems in a careless uninvolved manner, skipping many questions. He is able to do simple addition and subtraction but did make careless errors which had a negative impact on his score (for example  $9+7=17$ ,  $5 \times 3=20$ ). He was unable to complete examples that required regrouping. Robert received a grade score of 2.4. Robert needs to memorize his number facts and review the concept of regrouping.

**Applied Problems:** This subtest measures practical math knowledge, such as working with money and measurement, as well as working with word problems. Robert had a great deal of difficulty with this task. He does not know all his coin amounts, nor was he able to apply the correct operation to word problems. He received a grade score of 1.6 on this subtest.

#### Oral Language:

**Picture Vocabulary:** This subtest measures expressive vocabulary knowledge and is dependent on a youngster's level of experience and general knowledge base. Robert did poorly on this subtest receiving a grade level of K.3.

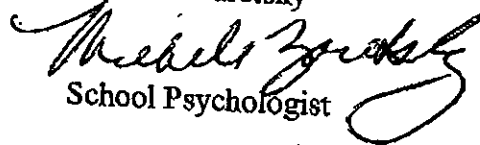
**Oral Comprehension:** On this subtest the student supplies the missing word to a short passage or sentence. It requires inferential reasoning, vocabulary knowledge and auditory comprehension skills. Robert has weaknesses in oral reasoning and received a grade score of 1.2 on this subtest.



Summary: Robert Rios a 10 year old student who is classified speech and language impaired is currently in a special class with a 12:1:1 ratio and receives counseling and speech and language as related services. This evaluation is part of a comprehensive triennial review. Robert is a shy youngster, who spoke in a very low volume and whose work habits are problematic as he tends to give up easily, works slowly and has difficulty picking up on salient details in problems and tasks. Robert has made significant progress in all aspects of reading including decoding and comprehension. He is functioning at third grade levels in these areas. Math skills are weaker than reading skills. Oral language and auditory comprehension are both below expectancies. Robert is a friendly youngster who gets along with peers. However problems with feelings of inadequacy and lack of confidence affect his school functioning. Robert needs to develop better work habits and increase his motivation for academics. He needs to review math facts and regrouping and requires material presented visually as well as orally. Robert requires extra time because of his slow working style and help in picking out salient details of problems. He needs encouragement and reassurance to help him persist at tasks.

Final recommendations await the multi-disciplinary planning conference.

Michele Zaretsky



School Psychologist